SENATE—*Monday, June 19, 1989*

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the Honorable TOM HARKIN, a Senator from the State of Iowa.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*God of Abraham, Isaac and Jacob, Father of us all, Moses warned Israel as she was about to become a nation: "And it shall be, if thou do at all forget the Lord thy God, and walk after other gods, * * * I testify against you this day that ye shall surely perish. As the nations which the Lord destroyeth before your face, so shall ye perish. * * *"*—Deuteronomy 8:19, 20.

Thomas Jefferson asked the penetrating question: "Can the liberties of a nation be secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?"

Gracious God, every day since the Senate began 200 years ago, it has opened with prayer. They did it because they believed they needed it. Heavenly Father, forbid that we should continue it perfunctorily, simply because it is a custom to be gotten out of the way for more important things. Restore to our Nation the beliefs of our founders, infused as they were with Biblical values. Help us not to forget Thee, Lord, nor take Thee for granted. Help us to realize our daily, desperate need for Thee in the totality of our being and doing.

In the name of Him who is Lord of Heaven and Earth. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 19, 1989.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Tom Harkin, a Senator from the State of Iowa, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. HARKIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business, not to extend beyond 12 noon, with Senators permitted to speak therein for up to 5 minutes each.

At noon the Senate will resume debate on S. 5, the child care bill. As I indicated last week, and under the order which now exists, any votes ordered today will not occur prior to 5:30 p.m. Under that order, the same provisions applied to any votes ordered on Friday. During Friday while there was extensive and informative debate on the subject, there were no votes ordered.

So as of now, no votes are scheduled for 5:30; although, if amendments are offered this afternoon with respect to which there could be action, either a vote on the amendment or tabling or otherwise, then the votes could occur at 5:30.

I hope, for the benefit of our colleagues, that we will get some indication of how we plan to proceed this afternoon, and we will be able to make an announcement so that the Senators can adjust their schedules accordingly. As of this moment, no votes are scheduled to occur today.

If any are scheduled this afternoon, they will not occur prior to 5:30, and I hope to have some indication as to whether or not there will be any such votes in advance of that time, so that Senators may be apprised of what will occur, so they can adjust their schedules accordingly.

Mr. President, I reserve the remainder of my leader time. I am pleased to yield to the distinguished Republican leader.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Republican leader is recognized.

Mr. DOLE. Mr. President, I know some of my colleagues will not be here any time today, and that is the only reason to be given notice on votes. I am not certain, but at least I know of no amendment on this side today. There may be some. I think we will find probably tomorrow we will have our substitute ready, and there may be single amendments on this side, but hopefully, by midafternoon I will be in a position to advise the majority leader.

Mr. MITCHELL. If I may suggest, in order to give our colleagues time to make the necessary travel arrangements, would it be possible for the distinguished Republican leader and I to meet and discuss this, perhaps prior to 1 o'clock, at which time I could then be in a position to make an announcement to indicate to Senators what is or is not likely to occur.

Therefore, Senators may look forward to a further announcement in this regard, hopefully, sometime around 1 p.m. or shortly thereafter.

A MESSAGE TO CONFEREES

Mr. DOLE. Mr. President, it is my understanding that the House will not be ready to send over its version of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, H.R. 1278 until tomorrow. Once we receive the bill, we will proceed to conference on the thrift reform legislation.

URGENT ACTION NEEDED

I want to remind my colleagues from both Houses who will be participating in this conference how important it is that they move quickly to resolve the differences between the House and Senate versions of the bill and reach an agreement.

In President Bush's State of the Union Address on February 9, he gave Congress 45 days to complete action on this legislation. Today is day No. 130, and we still do not have a bill ready for the President's signature.

Senator JAKE GARN has stated repeatedly that we need to stop the "hemorrhaging." I agree. The losses have been piling up at a rate of $1 bil-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

lion a month. It is crucial that we move to contain them.

Two full months have passed since the Senate passed its version of the bill, raising the ultimate cost of the thrift industry bailout by as much as $2 billion. The American taxpayer cannot afford further delay.

A bipartisan effort to produce reform in both Houses of Congress has generated two strong bills. The President was particularly pleased when Members of the House voted Thursday to defeat the Hyde amendment by a vote of 326–94. The House leadership on both sides of the aisle, the chairman of the House Banking Committee, HENRY GONZALEZ, and the ranking member, CHALMERS WYLIE, are to be commended for their efforts on this issue.

A STRONG BILL IS NEEDED

There are major differences between the House and Senate versions of the bill. The funding and housing provisions are obvious examples. These differences will have to be ironed out in the conference.

My hope is that the conferees will decide to include the toughest provisions in both bills in the conference agreement. I think we have to move quickly, but we also need to move responsibly.

We owe the American taxpayer our best effort to ensure that this never happens again. That means reducing the risk to the Federal deposit insurance funds by requiring that the industry put up real capital—not good will, not something else, but real capital.

This is a massive piece of legislation. It lays the groundwork for a structural overhaul of the thrift regulatory system and provides a funding mechanism for the largest bailout in history—the total cost could run over $157 billion. Nobody knows what the final cost will be.

KEEP THE MOMENTUM

There is work to be done, but we must not lose the momentum from the House action last week and the President's meeting with Republican and Democratic leaders in the House and Senate.

I urge my colleagues to push for a conference agreement as soon as possible.

Mr. President, I reserve the remainder of my time.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 12 p.m., with Senators permitted to speak therein for a period of 5 minutes each.

The distinguished Senator from Illinois is recognized.

INCREASED UTILIZATION OF ETHANOL FUEL

Mr. DIXON. Mr. President, President Bush has just unveiled his proposal to Congress on the Clean Air Act. I am happy that the President has weighed in on the clean air debate, and I think his proposals will help the Congress and the White House to reach a consensus on how to clean up the Nation's air. Although his proposal is light on specifics, I heartily agree with the President on at least one important issue—the necessity of increasing our domestic utilization of oxygenated fuels, especially ethanol.

From a fledgling endeavor, the ethanol industry has grown to a domestic fuel industry that produced and marketed over 840 million gallons of fuel in 1988. In the process, the ethanol industry has created a cash market for some 340 million bushels of grain, thereby, increasing farm income by an estimated $1 million and lowering Federal farm program costs by $700 million. At the same time, this domestic industry has helped to reduce oil imports by nearly 40 million barrels.

Mr. President, in addition to being an excellent octane enhancing additive to gasoline, ethanol offers a whole host of significant environmental benefits which make it an effective pollution reduction option. Ethanol blended fuels can enable the over 80 carbon monoxide and ozone nonattainment areas to come into compliance with EPA standards. Current predictions suggest that the use of ethanol blends will reduce motor vehicle emission of carbon monoxide approximately 25 to 30 percent. Indeed, because the oxygen content of an ethanol blend is almost twice that of other oxygenated fuels, its ability to reduce carbon monoxide levels is greater than any alternative oxygenated fuel.

Motor vehicles are the major source of ozone precursors, the major source of carbon monoxide, and a significant source of air toxics. Control of vehicle emissions of these pollutants has focused on the vehicle. In turn, Detroit has made dramatic improvements in this area. We have already made most of the improvements possible on petroleum powered cars, buses, and trucks. It makes sense that the next round of improvements come from vehicles powered by clean renewable fuels. The President has called for car manufacturers to produce a million clean-fueled vehicles per year by 1997. I say this is a step in the right direction, and I hope to see at least that many clean cars and trucks sold by the turn of the century.

Mr. President, it is time that we recognize the importance of ethanol in solving our smog and air toxics problem. It is good for our air; it is good for our farmers; and it is good for reducing our dependency on foreign oil. Mr. President, this is a profoundly good idea.

I encourage my colleagues on the Environment and Public Works Committee to include the benefits of ethanol in the clean air reauthorization bill that they are now drafting.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ACT FOR BETTER CHILD CARE SERVICES

Mr. BINGAMAN. Mr. President, I rise today to speak in favor of the Act for Better Child Care Services, the most sweeping piece of child care legislation ever introduced here in the Congress.

This bill is one of the most important pieces of legislation we will consider this year, and I urge its swift passage.

Finding safe, affordable child care has become critically important in recent years to families throughout my home State of New Mexico and across the country.

More and more households are headed by single working parents, and in two-parent households, more and more often both parents are working outside the home. Thus, growing numbers of dual-career families are confronted with the problem of finding a way to provide their children with safe and affordable care.

Nationally, 56 percent of all American women work outside the home. In New Mexico, some 43,000 households are headed by single mothers, and last year, more than 60 percent of the court-ordered child support was either not paid at all or was paid only in part. Child support payments that were made averaged only about $1,300 a year.

A recently completed study undertaken by the New Mexico Preschool Project Task Force, which I helped organize last year, revealed that more than 61,500 of our State's children under the age of 6 had mothers who worked outside the home.

But licensed child care space available in our State was for only 21,388, or space available for 35 percent of those children.

But even for the parents who do find care for their children, worries often continue. Each day parents wonder how things are going at home or at the sitter's. Do their children receive enough personalized attention? Are

they being challenged mentally? Are they safe? Does the sitter really care about them? Can a mother or father be a good parent if she or he leaves a child alone or with someone outside the family?

Through a series of forums and hearings conducted over the past couple of years, I have met parents and providers throughout New Mexico who have voiced these concerns to me. And I am troubled because I know there is a direct tie between the quality of child care and the ability of a child to become a happy, productive, useful member of society.

At a minimum, we know what the studies have shown. Quality, safe, supervised, and educational care, even as early as 3 years of age, eventually translates into well-rounded individuals, better school performance, lower dropout rates, lower unemployment rates, and lower crime rates. It means that 15 years later more children will go to college or participate in vocational and job training programs.

It makes sense that if our children get the proper nurturing and education during those critical preschool years, they likely will be that much more successful through the school years and beyond.

However, the need for quality care is not limited to children of preschool age. Indeed, many experts believe the benefits of early intervention can be negated if a child does not receive proper care and attention during the school years. And as with parents of infants and preschoolers, the working parents of school-age children daily face the challenge of finding affordable, supervised, care for their children during the hours before and after school.

During a field hearing of the Congress' Joint Economic Committee, which I chaired last year in Albuquerque, NM, I learned of the extent of this child care dilemma and of the urgent need for the Federal Government to work with States and local communities to assure access to quality, affordable school-age child care for families with such a need.

Clearly, as more and more parents move into the work force, whether from necessity or desire, the need for us to focus on all of the dimensions of this Nation's child care challenge becomes even more critical.

So far, we have not done that. In New Mexico we are trying, but with a child care delivery system comprised of many poorly funded programs, we are unable to meet a need that is growing out of control.

Without question, we in the Federal Government can and must do more to help. Many things can be done. First, the Congress and the President need to recognize that child care is an issue that must be addressed comprehensively.

We must address the availability and affordability of care, and to that end, I believe a refundable tax credit for families with young children is an excellent idea. It is a proposal that should be supported. But a tax credit or refund is not a substitute for—and will not ensure—safe child care.

We also must address the quality of care our children receive. This is an issue that we have neglected and ignored for too long. For our children's future, we must address it now.

The Act for Better Child Care Services is a significant step toward a comprehensive solution to the child care dilemma. The bill recognizes and supports the efforts of State and local governments and employers to address child care.

It would put into place a Federal foundation that will not impose a new bureaucracy or child care system; instead, it provides States with flexible support so that they can build upon their current efforts to help parents choose quality child care settings.

The act, as amended, will not impose strict standards of care on providers. The States, not the Federal Government, will set their own standards based on their particular needs and concerns.

A national panel will recommend basic child care safety standards, which the States may or may not adopt. In many States, the standards will be very basic. Always, the health and well-being of our children should remain our greatest concern.

This act is a major step forward for the Federal Government, yet a full 70 percent of its funds will go directly to parents, who can best select the type of care suited for their children. This is how it should be—a partnership involving Federal and State governments, local communities, and parents working together to ensure a safe, bright future for our children.

I will close by reiterating the need to acknowledge that child care is a national problem which must be addressed in a comprehensive way. We must realize it is a challenge that must be met if we are to meet all of the other challenges we face as a nation.

An investment in a comprehensive child care program is an investment in our Nation's future. It is an investment in New Mexico's children, in Wyoming's children, in Mississippi's children, in all of our children, that will pay off in stronger families, increased productivity in the workplace, and a healthier local, national, and international economy.

Simply put, it is an investment we must make for our children and our future.

I appreciate the chance to speak on this.

I yield the floor.

TRIBUTE TO DAVE GRIGGS

Mr. GARN. Mr. President, this past Saturday morning, my good friend and fellow crewmember from my flight aboard the space shuttle *Discovery*, Dave Griggs, was killed in a crash of an aircraft he was flying. Dave was more than just a good friend, as are all of the members of the crew with whom I flew in space. The unique bond that is formed among those who have traveled in space together is unlike anything else I have seen in human experience. We have seen and felt things that very few humans have felt and which are almost impossible to describe completely. So much of what we shared together remains in the realm of the unspoken.

The relationships formed in that experience are life long. In the years that have followed since that flight, I have maintained close contact with each member of that crew and their families as well as with many of the other astronauts and people at NASA who were involved in the preparation for and conduct of that flight. We have had crew reunions and get togethers; we have joined together in celebration of milestones in each others' lives; we have socialized and laughed and played together, and we have worked together to insure the continuation of our Nation's manned space flight program.

Dave's loss is a very deep and personal one. But it is also a great loss to NASA and to the Nation. Dave's entire career has been full of examples of his dedication to excellence. Rather than detail all of his many accomplishments, I ask unanimous consent that Dave's biography be printed in the RECORD at this time.

There being no objection, the biography was ordered to be printed in the RECORD, as follows:

BIOGRAPHICAL DATA

Name: S. David Griggs (Mr.), NASA Astronaut.

Birthplace and date: Born September 7, 1939, in Portland, Oregon. His parents, Mr. and Mrs. Jack L. Griggs, Sr., reside in Lawrence, Michigan.

Physical description: Brown hair; brown eyes; height: 5 feet 10 inches; weight: 175 pounds.

Education: Graduated from Lincoln High School, Portland, Oregon, in 1957; received a bachelor of science degree from the United States Naval Academy in 1962 and a master science in Administration from George Washington University in 1970.

Marital status: Married to the former Karen Frances Kreeb of Lake Ronkonkoma, Long Island, New York. Her parents, Mr. and Mrs. Charles Kreeb, reside in Lake Ronkonkoma, New York.

Children: Alison Marie, August 21, 1971; Carre Anne, May 14, 1974.

Recreational interests: He enjoys flying, auto restoration, running, and skiing.

Organizations: Member, Society of Experimental Test Pilots, National Air Racing Group, Naval Reserve Association, Naval Academy Alumni Association, Association of

Naval Aviators, Naval Institute, Naval Aviation Museum Foundation, Naval Order of the United States, Tailhook Association.

Special honors: Awarded the Navy Distinguished Flying Cross, Meritorious Service Medal, 15 Air Medals, 3 Navy Commendation Medals, Navy Unit Commendation, Meritorious Unit Citation, Defense Distinguished Service Medal, National Defense Service Medal, Republic of Vietnam Campaign Medal, Vietnamese Cross of Gallantry, NASA Space Flight Medal, NASA Achievement Award, and NASA Sustained Superior Performance Award.

Experience: Mr. Griggs graduated from Annapolis in 1962 and entered pilot training shortly thereafter. In 1964, he received his Navy wings and was attached to Attack Squadron-72 flying A-4 aircraft. He completed one Mediterranean cruise and two Southeast Asia combat cruises aboard the aircraft carriers U.S.S. *Independence* and U.S.S. *Roosevelt*. Mr. Griggs entered the U.S. Naval Test Pilot School at Patuxent River, Maryland, in 1967, and upon completion of test pilot training, was assigned to the Flying Qualities and Performance Branch, Flight Test Division, where he flew various test projects on fighter and attack-type aircraft. In 1970, he resigned his regular United States Navy commission and affiliated with the Naval Air Reserve in which he currently holds the rank of Rear Admiral.

As a Naval Reservist, Rear Admiral Griggs has been assigned to several fighter and attack squadrons flying A-4, A-7 and F-8 aircraft based at Naval Air Station New Orleans, LA, and Miramar, CA. His most recent assignments have been as Commanding Officer, Attack Squadron 2082, Executive Officer, Carrier Group 0282, mobilizing to Battle Force Sixth Fleet, Commanding Officer, Naval Reserve Naval Space Command 0166 stationed at the Naval Space Command Headquarters, Dahlgren, Virginia, and Commanding Officer, Office of Naval Research/Naval Research Laboratory 410, Houston, Texas. Rear Admiral Grigg's current mobilization assignment is as Chief of Staff Commander Naval Air Force, United States Pacific Fleet, San Diego, California.

He has logged 9,500 hours flying time—7,800 hours in jet aircraft—and has flown over 45 different types of aircraft including single and multi engine prop, turbo prop and jet aircraft, helicopters, gliders, hot air balloons and the Space Shuttle. He has made over 300 carrier landings, and holds an airline transport pilot license and is a certified flight instructor.

NASA experience: Mr. Griggs has been employed at the Lyndon B. Johnson Space Center as a research pilot since July 1970, and during this time, he has worked on various flight test and research projects in support of NASA programs. In 1974, he was assigned duties as the project pilot for the shuttle trainer aircraft and participated in the design, development, and testing of those aircraft pending their operational deployment in 1976. He was appointed Chief of the Shuttle Training Aircraft Operations Office in January 1976 with responsibility for the operational use of the shuttle trainer, and held that position until being selected as an astronaut candidate by NASA in Juanuary 1978. In August 1979, he completed a 1-year training and evaluation period and became eligible for Space Shuttle flightcrew assignment.

From 1979 to 1983 Mr. Griggs was involved in several Space Shuttle engineering capacities including the development and testing of the Head-Up Display (HUD) approach and landing avionics system, development of the Manned Maneuvering Unit (MMU), and the requirements definition and verification of on-orbit rendezvous and entry flight phase software and procedures. In September 1983 he began crew training as a mission specialist for flight STS 51-D, which flew April 12-19, 1985. During the flight, Mr. Griggs conducted the first unscheduled extravehicular activity (space walk) of the space program. The space walk lasted for over three hours during which preparations for a satellite rescue attempt were completed.

Current assignment: Mr. Griggs is in flight crew training as pilot for STS-33, as dedicated Department of Defense mission, scheduled for launch in August 1989.

February 1989.

[NASA news release, June 17, 1989]

ASTRONAUT S. DAVID GRIGGS KILLED IN AIR CRASH

Veteran Shuttle astronaut Rear Admiral S. David Griggs, USNR, was killed today when the North American AT-6 vintage trainer airplane he was flying crashed near Earle, Arkansas. Griggs was alone in the airplane when the accident occurred about 9:15 am cdt.

Griggs joined NASA in 1970 as a research pilot in the Johnson Space Center's Aircraft Operations Division. He served as project pilot for the shuttle trainer aircraft and later as Chief of the Shuttle Training Aircraft Operations Office before being selected as an astronaut candidate in 1978.

He made his first spaceflight in April, 1985, as a mission specialist aboard Discovery on missions STS 51-D, during which Griggs conducted the first unscheduled spacewalk in history.

Griggs had been in training as pilot for Shuttle mission STS-33, a classified Department of Defense flight aboard Discovery, scheduled for November of this year.

Mr. GARN. On Saturday when I learned of Dave's tragic death, I was simply incapable of granting the several requests for interviews which I received. Therefore, I issued a statement expressing my feelings about his death. I further ask unanimous consent to have that statement printed in the RECORD at this time.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR JAKE GARN ON THE DEATH OF ASTRONAUT S. DAVID GRIGGS, JUNE 17, 1989

It is difficult to find the words to express my deep sorrow at the death of my good friend Dave Griggs, who was killed this morning in the crash of the airplane he was flying.

Dave and I flew aboard *Discovery* together in April of 1985. That experience, and the training we underwent together prior to that flight, created a special bond between us, and between all the members of that crew. We shared the ultimate flying experience together, from the thrill of lift-off to the long gliding return to earth a week later. We shared unforgettable moments, as we were able to float quietly in the darkened flight deck of the shuttle and look down on this incredibly beautiful planet, and the eternity beyond it. It prompted us all to look deeply within ourselves to see the real meaning of our lives.

I watched as Dave and Jeff Hoffman walked in space and prepared for the attempt to rescue the ailing satellite we had launched; I was so proud of them and all of that crew and what they accomplished. To me they came to represent the very epitome of excellence and skill. Dave took his responsibilities as an astronaut very seriously. He knew that his performance would help shape the future of all space travelers, and he worked hard to make sure that he did the very best he could at whatever task was before him. That dedication led to his recent promotion to Rear Admiral in the Naval Reserve and to his selection to be the Pilot of STS-33, to be launched aboard *Discovery* this coming November.

I spoke to Dave just two days ago. I could sense this excitement in his preparations for his next space flight, and his unbridled enthusiasm for the space program he loved so much. He was filled with a sense of purpose and justificable pride in the contribution he was making to the future. We talked about his wife Karen, and their daughters, and about what other members of our crew were doing. To suddenly have him gone is difficult to accept. I have lost a person who was a part of the most incredible experience of my life. NASA has lost one of its best and most promising astronauts. This nation has lost one of its most capable, dedicated and talented individuals. And, most tragically, Karen and her two daughters have lost a loving husband, friend, and father. Kathleen and I share their grief and our prayers are with them.

Mr. GARN. No matter how many times we face the tragic loss of people close to us both personally and professionally it never becomes any easier. I join Dave's wife Karen and their two daughters, Allison and Carey, and Dave's many friends and family in mourning his death and urge my colleagues to join me in paying tribute to this noble and great American.

Mr. CONRAD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 1200 are located on today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

LOUIS PASSMAN CELEBRATES 100TH BIRTHDAY

Mr. DIXON. Mr. President, I would like to congratulate Louis Passman who was born in Chicago on July 8, 1889, and who will celebrate his 100th birthday this July 8.

Louis was raised in a small house on 1034 West 31st Street with his four brothers and sisters, and the Passman family became a vital part of this predominantly Irish section of Chicago. Through hard work and dedication Louis graduated from the Holden School while devoting much of his free time to helping his father on a horse and wagon in the scrap business. Louis also became active in politics

and developed a longstanding friendship with the late Mayor Daley.

Until his retirement, Louis was successful in the steel and scrap business for 80 years. His late wife, Goldie, bore two daughters and one son, and Louis now has five grandchildren and eight great-grandchildren.

I heartily congratulate Louis Passman on his long and prosperous life. He and his family are a tribute to Illinois and I wish him all the best and many more birthdays to come.

LT. COL. ROBERT S. "BO" BLUDWORTH

Mr. BYRD. Mr. President, on the occasion of his recent retirement from the U.S. Army, I wish to commend Lt. Col. Robert S. "Bo" Bludworth for 22 years of dedicated service to our Nation. During his military career "Bo" Bludworth has rendered effective service in a wide range of responsibilities. Members and employees of the Senate have come to know and appreciate "Bo" as a "top-flight" officer in the Army's Office of Legislative Liaison to the Senate.

As Senate Army Liaison Officer, Colonel Bludworth's duties involved serving as the initial contact between the Army and Senate. In this important capacity he has provided Senate Members, committees, and staffs with accurate, up-to-date information concerning defense related matters. His broad expertise has helped to fill Senate needs for information on the military, from constituent services to congressional investigations.

In addition to these tasks, Colonel Bludworth was of great assistance to Members of Congress in planning, coordinating and escorting over 75 congressional factfinding delegations, most of which were to locations overseas.

I recall in particular Colonel Bludworth's performance during the Senate's first delegation to the Soviet Union to meet Secretary Gorbachev, which I led in August 1985. During that trip Colonel Bludworth's steadfast attention to detail was important to the success of our mission.

Colonel Bludworth served in Vietnam as a helicopter and ground platoon leader, and he has held other important assignments in the United States and abroad, such as commander of armor units. His military awards and decorations include the Silver Star, Distinguished Flying Cross, Bronze Star, Air Medal, Army Commendation Medal for Valor, and Combat Infantryman's Badge.

Colonel Bludworth's commonsense attitude, distinguished service, and sense of honor demonstrate a conscientious officer in whom the Army and the Nation can take pride.

As Colonel Bludworth retires to begin his new career in private enterprise, our best wishes go to "Bo" and his wonderful wife, Sheila, and their fine children, James, Stephanie, and Todd. I am certain that his future endeavors will match the success of his distinguished military career.

AGENT ORANGE UPDATE: THE AMERICAN LEGION STUDY

Mr. CRANSTON. Mr. President, since agent orange first came to public attention in the late 1970's, I have been working to address and to attempt to resolve the concerns raised about possible adverse health effects arising from veterans' exposure to this herbicide in Vietnam. During this time, it has been my practice to provide periodic updates for my colleagues and others with an interest in this issue on current scientific research. I am continuing that practice today by placing in the RECORD evaluations of a study—generally known as "The American Legion Study"—the results of which were published in the December 1988 issue of Environmental Research. This journal published five articles by Jeanne and Steve Stellman et al. examining the health effects of herbicide exposure and service in Vietnam, based on questionnaires completed by American Legion members.

In November 22, 1988, letters to the Veterans' Advisory Committee on Environmental Hazards, the Agent Orange Working Group, and the Office of Technology Assessment, the chairmen and ranking minority members of the House and Senate Veterans' Affairs Committees requested that these groups comment on the scientific methods used in these studies, the validity of the statistical analyses, and the strength of the findings.

In a January 19, 1989, letter, Don M. Newman, the chairman of the Domestic Policy Council Agent Orange Working Group, submitted a letter and summary of findings from the chair of the science panel. He also included the individual opinions of each scientist. On January 26, 1989, Dr. John H. Gibbons, Director of the Office of Technology Assessment, responded to our request enclosing an OTA staff paper reviewing the studies. On January 30, 1989, Oliver H. Meadows, chairman of the Veterans' Advisory Committee on Environmental Hazards, wrote advising that the studies would not be reviewed by the full committee until its April 25 and 26, 1989, meeting, but that Dr. Yanders, the chairman of the Committee's Scientific Council, had reviewed the papers and prepared a summary of his views on them, which was enclosed for our information. Because I wanted to share these reports together, I delayed this update until I received information on the results of the full committee's review. On June 2, 1989, I received a copy of the committee's assessment.

Mr. President, I ask unanimous consent that these letters and their enclosures be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD:

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, DC, January 26, 1989.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR ALAN: The enclosed OTA Staff Paper reviews a study titled "The Columbia University-American Legion Vietnam Veterans Study" sponsored by the American Legion of the effects of service in Southeast Asia during the Vietnam era. As you and your colleagues requested in your letter of November 22, 1988, the OTA review discusses the scientific methods used and the validity of the findings.

The study (referred to as "The American Legion Study") is based on responses to a mailed questionnaire by a sample of Legionnaires in six states who had served either in Southeast Asia (SEA) or elsewhere during the Vietnam era. Questions concerning military experiences and aspects of subsequent functioning and wellbeing were asked. The study was conducted by researchers based at the Columbia University School of Public Health, and the results were published in five papers in the December 1988 issue of *Environmental Research.*

The study investigators reported deficits in a number of social, economic, physical, and psychological measures that they attributed to having served in SEA. They also reported that among SEA veterans, problems appeared to be associated with the extent of combat experience and with having higher scores on an Agent Orange exposure estimate scale.

OTA finds that the study has major flaws that call into question the validity of virtually all the findings reported. These flaws include: (1) aspects of the method of selecting the study population and low rate of response to the questionnaire, both of which may have contributed to a biased comparison of SEA and non-SEA veterans, and of subgroups of SEA veterans; (2) an unvalidated and probably invalid method for assessing Agent Orange exposure; and (3) an unvalidated and probably invalid approach to collecting health (and possible other) information about the participants. All epidemiologic studies suffer from some bias, and no methodology is perfect. However, the American Legion study has such serious problems that, even though some of its conclusions might be correct, the evidence produced by the study cannot be relied upon for an understanding of the consequences of having served in SEA during the Vietnam era.

An editorial by Michael Gochfeld, which accompanies the American Legion Study reports, suggests that the method used to estimate exposure to Agent Orange in this study is an improvement on previous attempts, and should be applied widely in other studies of veterans. He ascribes the government's decision to halt the Congressionally-mandated Agent Orange study to CDC's "arguing nihilistically that since exposure cannot be well documented, the study was not feasible." The Government's

decision was made because of compelling evidence, from serum dioxing testing and also from a more sophisticated exposure estimation procedure than that used by the American Legion investigators, that there did not exist a large group of ground troops with significant exposure. The American Legion Study has done nothing to alter these conclusions.

I hope you find this review helpful. If you have any questions or comments on it, please feel free to call me, or to contact Clyde Behney or Hellen Gelband of the OTA Health Program (at 8-6590).

Sincerely,

JOHN H. GIBBONS.

OTA REVIEW OF: THE COLUMBIA UNIVERSITY-AMERICAN LEGION VIETNAM VETERANS STUDY*

(Staff Paper Prepared by Hellen Gelband, Special Projects Office of the Health Program, Office of Technology Assessment, U.S. Congress, January 1989)

SUMMARY

The American Legion sponsored a study in which a sample of their membership who had served during the Vietnam era filled out questionnaires concerning their military experiences and aspects of their subsequent functioning and wellbeing. The study was conducted by researchers based at the Columbia University School of Public Health, and the results were published in five papers published in the December 1988 issue of *Environmental Research.*

The investigators reported deficits in a number of social, economic, physical, and psychological measures that they related to having served in Southeast Asia (SEA). They also reported that among SEA veterans, problems appeared to be associated with more extensive reported combat experience, and with having higher scores on an Agent Orange exposure estimate scale. OTA was asked by the Chairmen and Ranking Minority Members of the Senate and House of Representatives Committees on Veterans' Affairs to comment on the methodology of the Columbia University-American Legion Vietnam Veterans Study (referred to as the "American Legion Study"), as well as the validity and strength of the findings reported.

This study has major flaws that call into question the validity of virtually all the findings reported. These flaws include: 1) aspects of the method of selecting the study population and low rate of response to the questionnaire, both of which may have contributed to a biased comparison of SEA and non-SEA veterans, and of subgroups of SEA veterans; 2) an unvalidated and probably invalid method for assessing Agent Orange exposure; and 3) an unvalidated and probably invalid approach to collecting health (and possibly other) information about the participants. All epidemiologic studies suffer from some bias, and no methodology is perfect. However, the American Legion study has such serious problems that, even though some of its conclusions might be correct, the evidence produced by the study cannot be relied upon for an understanding of the consequences of having served in SEA during the Vietnam era.

INTRODUCTION

This review gives a general description of the design and findings of the American Legion study, and discusses the Agent Orange exposure estimation methodology used, aspects of the participant selection process that might have affected the results, problems with self-reported data of the type collected in this study, and problems with the study questionnaire. The review concentrates on reported physical and psychological health outcomes.

DESCRIPTION OF THE STUDY AND FINDINGS

The American Legion study is a cross-sectional survey of 2,858 veterans who served in Southeast Asia during the Vietnam era (SEA veterans) and 3,952 who served elsewhere during that time. These were the respondents out of 12,588 Vietnam-era veterans to whom questionnaires were mailed.[1] While the participants are described as a "random sample" in the reports, that does not appear to be the case, as explained below (see *Study Population*).

Respondents filled out a printed questionnaire [2] and sent it back to the investigators. The questions cover military experience, basic demographics and education, attitudes toward the Veterans Administration, personal health history and current status, reproductive history, some aspects of lifestyle, economic status, and social relationships. The questionnaires were the sole source of information for the analyses published in *Environmental Research;* no independent documentation (e.g., military or medical records) of any information was collected. (A statement is made, however, that data on birth defects will be presented in a future report because of the necessity for medical verification.) Some problems with the questionnaire are discussed below (see *The Questionnaire*).

A variety of standard statistical techniques were used in the analyses, but inconsistencies in the types of adjustments made caused difficulties in interpreting some results. For example, some analyses relating findings to Agent Orange exposure scores are adjusted to attempt to remove the effect of combat (the study's Agent Orange exposure scores and combat scores are highly correlated), but some are not, leaving a question as to whether effects seen are associated with Agent Orange scores, combat scores, or both. In general, not enough information is given for the reader to reproduce the analyses given or to reanalyze the data in other ways.

Despite a wealth of detail, the study methodology is not described sufficiently well, there appear to be inconsistencies throughout the papers in the numbers of men in various categories, and there is a general lack of precision in reporting the methods and findings.

Reported health and reproductive outcomes

Health and reproductive outcomes are discussed in one paper.[3] A variety of physical conditions were reported more frequently by SEA veterans than by non-SEA veterans. These include: heart disease, venereal disease, benign fatty tumors, and various skin conditions. A greater percentage of men who reported handling herbicides directly, compared with other men who served in SEA, reported higher rates of high blood pressure, heart disease (but not when adjusted for differing age distributions), stomach or duodenal ulcer, and various skin conditions. Among men who served in SEA but did not handle herbicides directly, higher rates of benign fatty tumors and various skin conditions are reported with higher Agent Orange exposure scores. Among SEA veterans (excluding those who handled herbicides directly), higher rates of a number of conditions were reported in association with higher combat exposure scores: high blood pressure, stomach or duodenal ulcer, benign fatty tumors, arthritis or rheumatism, hepatitis, genito-urinary problems, nervous system disease, and major injury. In another analysis, various symptoms were grouped into five scales called (1) faint, (2) fatigue, (3) aches, (4) colds, and (5) skin. On the questionnaire, men were given a choice among the following answers to rate the symptoms included in these scales: (1) not a problem, (2) minor problems, (3) a problem, or (4) really a major problem. Results reported are as follows: (1) SEA veterans scored significantly higher (more problem symptoms) than non-SEA veterans on each scale; (2) men who reported handling herbicides directly had significantly higher scores on each scale than did other SEA veterans; (3) in multiple regression analysis, combat scores and Agent Orange exposure scores were correlated with scores on each scale. In the latter analyses, the combat scale was more strongly correlated than was the Agent Orange scale.

A slightly (but significantly) higher percentage of SEA veterans compared with non-SEA veterans reported either having children or having tried to have children (90.3 percent vs. 88.4 percent); the percentage increased significantly with combat level (low, medium, high). The percentage reporting difficulty having children was significantly higher among SEA veterans compared with non-SEA veterans (18.0 percent vs. 14.9 percent), but was not associated with combat levels. Rates of miscarriage in female partners correlated with Agent Orange exposure scores and with combat scores.

Post-traumatic stress disorder (PTSD)

Between 1.8 and 15.0 percent of SEA veterans in the study were reported to have PTSD, depending upon which of three definitions was used.[4] Using at least one of the definitions, the rate of PTSD increased with increasing combat scores.

AGENT ORANGE EXPOSURE ESTIMATION METHOD

The method used to arrive at numeric Agent Orange (and other herbicide) exposure scores for individual participants is described in a 1986 paper by Stellman and Stellman.[5] As have previous attempts at developing an Agent Orange exposure index, this one combines information from soldiers' locations and the computerized records of herbicide spraying (from the HERBS and Services HERBS tapes), taking into account time and distance from spraying. The authors make a number of claims for this methodology, the most general being that it "can be profitably used in most epidemiologic studies of the effects of herbicides on U.S. troops." Further, that "the accuracy and precision of the method are comparable to, or exceed, those used in many major environmental and occupational studies." They state that "a sizeable number of individuals were classified as 'high' exposure," and that the data "make the convincing point that sufficient numbers of troops are available and identifiable for epidemiologic study of herbicide effects."

The American Legion exposure estimation method suffers from more severe problems than did CDC's earliest attempt at an exposure index, which OTA rejected. The most serious of the problems with the exposure estimation method are:

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*The views expressed in this Staff Paper do not necessarily represent the views of the Technology Assessment Board or its individual members.

Footnotes at end of article.

1. Self-reported location data: Nearly 20 years after the fact, veterans were asked to recall each location at which they spent time during their tour of duty in Vietnam. Especially for men who moved around frequently (probably those in combat), this is an almost impossible feat.

2. Locations were chosen from a list of place names provided in the questionnaire. While men might have been near a particular town, large US bases, where many men were stationed, and where combat troops were likely to be, were not in the middle of towns. The place names may refer to places many miles off, yet it was presumably these actual towns that the American Legion researchers used as points of "location," from which the distances to spray coordinates were calculated. It is impossible to judge the accuracy of this method, and the investigators provide no information to support their claim that the method is "precise and accurate." In fact, it appears to be far less precise than CDC's method using grid coordinates from military records of troop locations.

3. There is no discussion of missing data, yet there must have been significant gaps in the information reported on the questionnaires. If gaps were ignored, as seems likely, it is possible that reporting a lot of places or accounting for a greater percentage of the tour of duty would produce higher scores. This is one point on which no information is found in the papers.

4. Any location up to 15 kilometers away from a spray path coordinate virtually any time—including years later—after spraying, is considered in the exposure zone, the scores diminishing with increasing distance from the coordinate. The highest exposure score appears to be given for being within 5 kilometers of spraying. The experimental data that exist from trials at Eglin Air Force Base, which, while not necessarily definitive are the best available, suggest that virtually no Agent Orange would have travelled more than 2 kilometers from the spray line, and even at that distance, the amounts were minuscule. In CDC's analyses, nearly all troop locations that were "within 5 kilometers" of spraying were actually beyond 2 kilometers (i.e. betwen 2 and 5 kilometers), so even what is considered to represent the highest exposure in the American Legion study would likely have been almost no exposure at all in most instances. While it is entirely possible that some people were within 2 kilometers of spraying, particularly some time after spraying, they would likely be in the minority. The rationale for including distances up to 15 kilometers does not appear to be supportable given the set of facts available.

The investigators do not give examples of other occupational or environmental studies that have less precise and accurate exposure measures, but at least in studies of herbicide or dioxin exposure, this is not true. Several studies have focused on occupational groups with known, direct exposure, including the studies of Swedish foresters, the current NIOSH studies of chemical production workers, and the Air Force Ranch Hand study. NIOSH and the Air Force are also measuring residual dioxin in the body by means of blood serum testing. Studies of heavy environmental exposure in Missouri and Seveso include groups with known, direct exposure. In no case would a person living 15 kilometers from where herbicides were sprayed be assumed to have had significant exposure, unless some direct exposure could be documented. A person living even 5 kilometers away from a plant producing a dioxin-contaminated chemical would in no way be considered exposed comparably to workers in the plant, even if some dioxin were entering the general environment from the plant. While everyone acknowledges that conditions in Vietnam were different in many ways, there is no evidence suggesting that a scenario as unlikely as that underlying the American Legion exposure estimation method existed.

The comment that a "sizeable" number of men were classified as having had high exposure is misleading. Although no description is given of the method used to divide the group into low, medium, and high exposure categories, it appears that divisions were made to create groups of convenient size for analysis. This conclusion is based on examining the "Agent Orange Exposure Index" distribution in Figure 3 (page 120) of the first paper.[6] It is clear that most of the 557 men classified as having had "high" exposure were very nearly the same as those classified as "medium" and that the entire range of scores, except for a few men in a long tail in the high end, was quite tight. Any array of individuals with specific numeric scores, which can vary by even small amounts, is divisible arbitrarily into groups, but doing so is not necessarily meaningful. To give a simple example, a man who was 10 kilometers from a spray would presumably have a higher score (for that occasion) than a man who was 15 kilometers, but in all likelihood, neither had a significant exposure, even if one is called "high" and the other "medium."

The authors claim a measure of validity for this index because they say that men could not have known, by the information they provided, how they would be classified. But according to data presented in the 1978 paper, men's self-reports of exposure were predictive of their exposure status as calculated. This could be due to the high correlation of the Agent Orange and combat indexes, suggesting that, in general, men who scored higher on the subjective combat exposure index also believed they had been more exposed to Agent Orange (and ultimately reported more health problems). Because of the gross imprecision represented by the Agent Orange index, the idea that it was actually measuring something else is a plausible explanation for the findings.

CDC's final exposure assessment method, used in their "validation study" [7] was superior to the American Legion method. When CDC arrayed their scoress, the range was quite small, with very few who had objectively high scores. This lack of clearly defined high exposure was borne out by the results of serum dioxin testing. In that study, the group of men who had served in heavily sprayed areas in Vietnam had dioxin levels no different from a similar group of men who had served elsewhere. If there were, in fact, large numbers of ground troops with high exposures, it is possible that CDC's method would have identified them accurately. The finding of only "background" dioxin levels in the ground troops contrasted sharply with significantly elevated levels in a group of Ranch Hands with known, direct exposure,[8] providing assurance that a heavily exposed group is easily identifiable from one with low exposure even 15 or 20 years after the exposure ceased. The American Legion study refers to testing for residual dioxin in the body as a means of detecting past exposure as "yet to be validated." That statement appears to be inaccurate, in light of CDC's study, a similar study conducted under the auspices of the New Jersey Agent Orange Commission [9] (coauthored by Michael Gochfeld, who wrote the editorial [10] in *Environmental Research* that accompanied the American Legion study reports), as well as studies of heavily exposed Missouri residents,[11] and recent results of serum dioxin testing in individuals living in a dioxin-contaminated area near Seveso, Italy.[12]

The editorial accompanying the American Legion Studies [13] erroneously states that the Government's decision to halt the Congressionally mandated Agent Orange study was a result of CDC "arguing nihilistically that since exposure cannot be well documented, the study was not feasible." This is not true. The decision was made because of compelling evidence, from serum dioxin testing and the military records, that there did not exist a large group of ground troops with significant exposure. The American Legion study has done nothing to alter this set of facts.

STUDY POPULATION

The participants in the American Legion study are referred to as a "random sample" of male Vietnam-era Legionnaires from six States. However, this does not appear to be the case, and the divergence from the ideal of a random sample could well have been responsible for some of the reported differences in health and other outcomes reported. The procedure for identifying potential participants describes an initial list of randomly selected names of American Legionnaires in the six States included in the study. Late in the process, 770 "volunteer researchers" were used to contact people on the lists to determine their time and place of service. Each volunteer was given a list of about 200 names, with the charge of identifying 15 SEA and 15 non-SEA Vietnam-era veterans. There is no suggestion that these volunteers contracted people on the list in a random order. Though the procedure is confusingly presented, it appears that once 15 from each group were identified, the volunteer could stop. This introduces some selectivity by the volunteers, the effect of which is unquantifiable. In a study of this type, it is important that the participants be selected independent of any characteristics other than their having served in Southeast Asia (for the SEA group) or having served elsewhere in the military during the Vietnam era (for the non-SEA group).

A second potential problem is participation bias. Once having received a questionnaire from the investigators, those who had been identified by the volunteers decided whether or not to participate. Every study that depends upon individuals freely choosing whether or not to participate has a potential problem with response bias. The greater the influence of other factors on selection into the study, particularly, for instance, if SEA veterans were more likely to participate if they had many health problems than if they were relatively healthy, the greater the potential for ending up with spurious results. The effects of this type of bias can be minimized in a number of ways. First, investigators attempt to get a high response rate from both groups, so that the "non-responders," even if they had participated, would have had little effect on the results. The overall response rate in the American Legion study was poor, reported to be between 52.5 percent and 64.1 percent, although it is impossible to determine, based on the information given, the precise response rate. The authors claim that the

sample is not significantly biased, but in the many figures they cite, and in the discussion, they do not include a simple comparison of the response rates of SEA veterans and non-SEA veterans separately, which is of fundamental importance. The information presented to substantiate their claim that the sample is not unduly biased and is representative of the class of veterans they represent is inadequate.

The low overall response rate and the potential bias introduced by the volunteer researchers suggest that the study population may not fairly represent the groups to which they belong, and that differential influences on response between SEA and non-SEA veterans, and possibly among various subgroups of SEA veterans may have affected the results significantly.

PROBLEMS WITH SELF-REPORTED, UNVERIFIED INFORMATION

This study depends entirely on information about "exposures" and a whole range of health and other outcomes. Nothing was verified by objective data. CDC's Vietnam Experience Study [14] (VES) clearly demonstrates that self-reporting of health events and reproductive history can lead to the erroneous conclusion that Vietnam veterans, and those who believe they were exposed to herbicides, have more health problems than non-Vietnam veterans and Vietnam veterans who do not believe they were exposed, respectively. Except for a small number of specific conditions (e.g., hearing loss), these differences were not borne out in the VES by standardized, detailed physical examinations, now was a reported excess of birth defects among the children of Vietnam veterans confirmed when all birth records were examined. These differences can occur because of underreporting by one group, overreporting by the other, or a combination of the two. It is not necessarily a result of individuals knowingly misreporting, but can be explained by differential recall.

Taking a specific example, the SEA veterans in the American Legion study reported significantly more skin problems than did the non-SEA veterans. Those who reported actually handling herbicides (and therefore would clearly have known that he would be in an "exposed" category) reported higher rates than SEA veterans who did not report handling herbicides. In addition, there was an increasing tendency to report skin conditions with increasing Agent Orange scores (though that association could be related to combat scores rather than Agent Orange scores) among the SEA veterans. In the VES, a similar excess of self-reported skin conditions was found. However, on physical examination, including an examination for scars of past skin problems, there was no difference between the two groups in the prevalence of any skin condition. With no corroboration of these differences based only on self-reporting, the American Legion study findings cannot be taken as evidence for real differences in health history or current health status.

The American Legion investigators claim that participants' health reporting could not have been influenced by prior knowledge of their Agent Orange exposure scores, therefore associations with Agent Orange are not the result of biases in response. This contention is not supported by the data presented, however. First, as discussed earlier, self-described exposure was correlated with exposure scores in the 1986 study. Second, Agent Orange exposure scores were highly correlated with combat scores. Combat scores were based on eight questions about experience in SEA, which in all likelihood led to a ranking reflecting mainly men's perceptions of how extreme their combat experiences were. The questions were all answered subjectively, the participant choosing between "never," "rarely," "sometimes," "often," and "very often," to describe the frequency of eight types of experiences, e.g., firing his weapon at the enemy, killing the enemy, seeing someone killed, etc. The way a veteran feels about and has dealt with his war experience in general is bound to affect the way in which he answers these questions. While this scale may be a valid measure of how a veteran perceives his wartime experience, which is of clear importance, it has not been validated against military records to determine whether these answers correspond to the veteran's actual experience. Nonetheless, the American Legion study uses this combat index as though it were an objective measure.

Issues related to PTSD assessment

The definition of PTSD in this study is based on use of the combat scale (eight questions) as a surrogate for identifying a traumatic event, and questions about PTSD symptoms, as defined by the Diagnostic and Statistical Manual of Mental Disorders ("DSM-III"). By arbitrarily defining different cutoffs and combinations of combat scores, the investigators arrive at different rates of PTSD among the SEA veterans. They refer to numbers of men "diagnosed" or with a "clinical diagnosis," though, in fact, none of the specific measures they use have been validated against the standard, which is a diagnosis based on an in-person clinical examination. The fact is that some particular percentage of these men actually has PTSD, and more have some symptoms of it. The actual numbers may be in the range circumscribed by the above estimates, but it is not possible to base conclusions about specific rates on this study.

Although validation of the questions used to define PTSD is mentioned, the claims are unsupported and in some cases misleading. The authors claim that the combat scale has been validated, but whether it has or not, it was not designed as a surrogate for detecting a traumatic event, but as a measure of combat. Any validation refers only to that. There is no evidence that the particular questions about PTSD symptoms used in this questionnaire, specifically self-administered, are a valid means of collecting this information.

At this point, with the National Vietnam Veterans Readjustment Study (NVVRS) and the VES completed, it is clear that PTSD is a real and significant problem for Vietnam veterans. Those two studies were better designed than the American Legion study, particularly the NVVRS, which did use a clinical examination to validate the in-person questionnaires on which PTSD prevalence estimates were based.

THE QUESTIONNAIRE

Two kinds of problems with the questionnaire itself, in addition to those already mentioned, may have affected the validity of various outcomes reported by the investigators. These problems include the "demand characteristics" of the questionnaire and several instances of faulty logic.

Demand characteristics

It is well known that the way in which questions are asked can influence the answers given, and these influences are known as demand characteristics. In the American Legion study questionnaire, the questions that might evoke negative feeling—e.g., about combat situations, about exposures to chemicals in the military, about flashbacks and anxieties—are asked first. Then the questions about happiness, satisfaction, and health are asked. This tends to set up certain hypotheses in the minds of participants as the questionnaire progresses.

The wording of some individual questions also suggest hypotheses. For example, one set of questions (which are obviously related to PTSD) is introduced with the statements: "Serving in the military often puts us in situations that stay in our memories for a long time." The first question then asks: ". . . how often have you: Had vivid recollections of your military services, especially bad scenes?" The introduction to the question sets up a situation in which the respondent would be encouraged to report recollections. If a person reported that he never or rarely has recollections, his response would be contrary to the statement made in the questionnaire. Answers to the rest of the questions in that group could be affected similarly.

Another example is a multipart question that begins with: "When all things are considered, to what degree were your military experiences stressful?" The next part of the question asks: "Taking all things together, how happy are you these days?" and then "In general, how satisfying is your life?" The grouping of these questions forces the respondent to evaluate happiness and satisfaction today in light of the level of stress he experienced in the military, as though there necessarily is a connection.

Faulty logic

The American Legion questionnaire, like many questionnaires, contains groups of questions that do not apply to all participants. To deal with this, "skip patterns" are built into it. For instance, the non-SEA veterans are told appropriately to skip the section on SEA military service. In two major instances, however, in the sections on drinking alcohol and the one dealing with family/marital relationship, inappropriate skips are introduced. The data on both subjects are reported in the papers with no mention of this problem, nor with any suggestion that the responses apply only to a portion of the respondents.

In the section entitled "Beverages, Tobacco and Medication," question 5 asks: "Do you drink alcoholic beverages?" If the answer is "No," the instruction is to go on to question 13. If yes, one continues with 6 through 12. Questions 6, 7, and 8 concern current drinking habits, and are skipped appropriately. Questions 9 through 12, however, should apply equally to former drinkers, e.g., question 10, which reads: "Has there been a change in your drinking habits since your discharge from the service?" The choices are: "no change," "yes, I drink more," or "yes, I drink less." Question 11: "Have you ever had a serious drinking problem?" Question 12: "Have you ever found yourself unable to consume alcohol even when you felt like it?" No other questions that would elicit the information that a respondent had stopped drinking are asked.

In the introduction to the section on family and marital relationships, respondents who had "lived alone for the past six months" are instructed to skip the entire series of questions. However, within the section to be skipped are questions directed clearly at men living alone: "If you have not lived with another person during the past six months have you had any friends of the opposite sex that you have enjoyed being

with?" In addition, a battery of questions concerning relationships with children are skipped. No rationale for this is given in the paper reporting these results, and they are reported as though they apply to the entire study sample.

In both of these cases (drinking alcohol and relationships) the information collected is incomplete, and the questionnaire may have been confusing to the respondent, making the accuracy of the reported results highly suspect.

FOOTNOTES

[1] Stellman, Jeanne M., and Stellman, Steven D., "Columbia University—American Legion Vietnam veterans study: Report #1," booklet, dated May 29, 1985.

[2] Vietnam Era Veterans Study, printed questionnaire, including letter signed by Keith Kreul and Jeanne M. Stellman, Ph.D., 12 pp., January 1984.

[3] Stellman, Steven D., Stellman, Jeanne Mager, and Sommer, John F., Jr., "Health and reproductive outcomes among American Legionnaries in relation to combat and herbicide exposure in Vietnam," *Environmental Research* 47:150-174, 1988.

[4] Snow, Barry R., Stellman, Jeanne Mager, Stellman, Steven D., and Sommer, John F., Jr., "Post-traumatic stress disorder among American Legionnaries in relation to combat experience in Vietnam: Associated and contributing factors," *Environmental Research* 47:175-192, 1988.

[5] Stellman, Steven D., and Stellman, Jeanne M., "Estimation of exposure to Agent Orange and other defoliants among American troops in Vietnam: A methodological approach," *American Journal of Industrial Medicine* 9:305-321, 1986.

[6] Stellman, Steven D., Stellman, Jeanne Mager, and Sommer, John F., Jr., "Combat and herbicide exposures in Vietnam among a sample of American Legionnaires," *Environmental Research* 47:112-128, 1988.

[7] CDC Veterans Health Studies, "Serum 2,3,7,8-tetrachlorodibenzo-p-dioxin levels in US Army Vietnam-era veterans," *JAMA* 260:1249-1254, 1988.

[8] CDC Agent Orange Projects Office, "Comparison of serum levels of 2,3,7,8-TCDD with indirect estimates of Agent Orange exposure in Vietnam veterans," typescript, August 1987.

[9] Kahn, Peter C., Gochfeld, Michael, Nygren, Martin, et al., "Dioxins and dibenzofurans in blood and adipose tissue of Agent Orange-exposed Vietnam veterans and matched controls," *JAMA* 259:1661-1667, 1988.

[10] Gochfeld, Michael, "New light on the health of Vietnam veterans," (editorial), *Environmental Research* 47:109-111, 1988.

[11] Patterson, D.G., Jr., Needham, L.L., Pirkle, J.L., et al., "Correlation between serum and adipose tissue levels of 2,3,7,8-tetrachlorodibenzo-p-dioxin in 50 persons from Missouri," *Arch. Environ. Contam. Toxicol.* 17:139-143, 1988.

[12] Mocarelli, P., Pocchiari, F. and Nelson, N, "Preliminary report: 2,3,7,8-tetrachlorodibenzo-p-dioxin exposure to humans—Seveso, Italy," *MMWR* 37(48):733-736, 1988.

[13] Gochfeld, Michael, "New light on the health of Vietnam veterans," (editorial), *Environmental Research* 47:109-111, 1988.

[14] CDC Vietnam Experience Study, "Health status of Vietnam veterans," *JAMA* 259:2701-2719, 1988.

VETERANS' ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington, DC, January 30, 1989.

Hon. ALAN CRANSTON,
Chairman, Committee on. Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to advise you that the series of papers reporting on the health status of Vietnam era veterans who are members of the American Legion which were recently published in "Environmental Research" (vol. 47, pp. 129-209, (1988)) will be reviewed at the next meeting of the Veterans' Advisory Committee on Environmental Hazards (currently scheduled for April 25 and 26, 1989). Due to conflicting schedules of Committee members, it is not feasible to convene a meeting of the Committee or of the Dioxin Panel prior to that date for the purpose of discussing these papers. However, Dr. Yanders, the Chairman of the Committee's Scientific Council has reviewed the papers and has prepared a summary of his personal views on them. I am enclosing that summary for your information.

A similar letter is being sent to the Chairman and Ranking Minority Members of the House and Senate Veterans' Affairs Committees. If I can be of further assistance, please let me know.

Sincerely,

OLIVER H. MEADOWS,
Chairman, Veterans' Advisory, Committee on Environmental Hazards.

EVALUATION OF THE STUDIES BY THE STELLMANS AND THEIR ASSOCIATES, ENVIRONMENTAL RESEARCH 47 (1988).

1. The major problem with this work is apparent in the first paper, which asserts that "categorization of Vietnam Veterans according to herbicide exposure can be successfully accomplished, based on an existing detailed herbicide application data base." No data are cited. There is no support for this position. In fact, the far larger, far better designed study earlier begun by CDC was abandoned precisely because no such exposure could be established from the records of pesticide application and troop movements.

2. The second problem, of almost equal magnitude, is the total reliance of the investigators on a self-administered questionnaire with no attempt at confirmation. Such procedures are notoriously prone to errors for which "internal checks" alone are not sufficient.

3. In a contentious and self-serving editorial in the same issue of the journal which contains all five papers, Gochfeld refers to them as "a remarkable series of epidemiologic studies." They are indeed remarkable for their far-reaching conclusions based on inadequate and faulty evidence. The editorial also is heavily biased against the CDC and VA, and plays upon the emotions of the reader by implying that the failure of more rigorous studies to find increased levels of morbidity and mortality in the population studied is evidence that the Vietnam Veterans continue to be mistreated because of their participation in an unpopular war. The editorial—and the papers themselves—adopt an "us against them" tone, in which "us" are those who agree with this position, and "them" are everyone else. The papers selectively cite work which supports their position and largely ignore that which does not.

4. The inclusion of Post-Traumatic Stress Disorder (PTSD) in the study confuses the issue. By this inclusion, Agent Orange is implicated by association, but the authors do not even suggest a relationship. It is also interesting to note that no data on PTSD are given for those veterans who did not fall into the "median or above" combat category.

5. The studies involve a population that is considerably different from the Vietnam Veteran as a whole, in that it is (a) predominantly white, (b) predominantly Northern, and (c) predominantly Midwest. There is also the likelihood that being a Legionnaire is more prevalent in certain social classes than in others. Even if its conclusions were correct, this work is on shaky grounds when it attempts to speak for "the Vietnam Veterans"'

6. These studies contain nothing of value to the V.A., and should be completely disregarded.

VETERANS' ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington, DC, June 2, 1989.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Shortly after the publication of a series of papers reporting on the health status of Vietnam era veterans who are members of the American Legion were published last September you wrote to me requesting the views of the Veterans' Advisory Committee on Environmental Hazards concerning these papers. The papers were reviewed by the Committee at its April meeting and I am enclosing a copy of the Committee's assessment.

A similar letter is being sent to the Chairman and Ranking Minority Members of the House and Senate Veterans' Affairs Committees. If I can be of further assistance, please let me know.

Sincerely yours,

OLIVER MEADOWS,
Chairman, Veterans' Advisory Committee on Environmental Hazards.

The Veterans Advisory Committee on Environmental Hazards at its April 1989 meeting reviewed a series of papers reporting the results of a study of randomly selected members of the American Legion who had military service during the Vietnam era. The authors sought to analyze information on the personal, reproductive, family, and mental health of the veterans, and on health behaviors, such as smoking, drinking, and drug use, and to determine the extent to which these factors varied with respect to exposure to combat and herbicides. In the first paper, "Combat and Herbicide Exposures in Vietnam among a Sample of American Legionnaires" (Stellman, et al., Environ. Res. 47: 112-128 (1988)), the authors analyzed the patterns of exposure to combat and herbicides.

The study population was derived from American Legion members in six states (Colorado, Ohio, Maryland, Pennsylvania, Indiana, and Minnesota). The randomly selected participants were mailed a self-administered questionnaire.

The authors noted that "(e)stimation of exposure to herbicides such as Agent Orange in Southeast Asia is without doubt the most difficult component of the entire study." They used a probabilistic exposure index based upon the Department of Defense's HERBS tape and supplementary files developed by the U.S. Army and Joint Services Environmental Support Group in conjunction with the subject's self-reported recall as to his geographic location in Vietnam. The authors noted the data used in the construction of the index were "derived from respondents' self-reports of locations in Vietnam, and, as such, are subject to recall error. Nevertheless," the authors stated, "subjects appear to have exercised considerable care filling out this portion of the survey." The index of exposure was described as counting all sprayings which ever occurred near each location reported by the veteran and was weighted inversely according to distance and exponentially according to elapsed time. The authors did not provide evidence that the exposure index is a valid measure of actual exposure to herbicides, and blood or tissue levels of dioxin or other chemicals were not measured.

To measure combat exposure, the investigators asked eight questions which sought to characterize the extent to which the respondents had undergone traumatic combat

experiences. Again, the authors did not provide evidence that their calculated combat index is, in fact, a valid measure of actual combat exposure.

The authors concluded that this (or similar) methodology could be used in most epidemiologic studies of the effects of herbicides on U.S. troops. The Committee had serious reservations about the scientific validity of this paper. Particular criticism was directed towards the authors' indices of exposure for both Agent Orange and combat. With respect to Agent Orange, the Committee noted the complete reliance upon the HERBS tapes and the recall of the study's participants. The authors provided no evidence to support the validity of the exposure indices. The failure to do so, in the opinion of the Committee, constitutes a serious flaw in the study design, and raises serious questions about the validity of the authors' conclusions. The authors themselves commented that they realized that the "classification of exposure to herbicides of Vietnam veterans is fraught with controversy" and commented that they had addressed the methodological issues previously.

The Committee believed that the authors relied excessively upon the presumed accuracy of the HERBS tapes as indicators of spray paths. The members observed that the tapes can be very inaccurate and not representative of actual combat missions in Vietnam. Also, assumptions concerning the dispersal of the herbicide, particularly the authors' failure to consider the biological degradation and absorption by the foliage, were a source of concern to the Committee.

Another limitation of the study involves the possible bias due to nonresponse. The authors indicated that "return rates ranged from a low of 52.5% in Pennsylvania to a high of 64.1% in Minnesota." The Committee commented that a health survey with such low response rates is at best questionable with respect to its validity. A survey with a response rate below 75%, the Committee observed, is relatively prone to bias. The authors attempted to address this issue when they stated that "the critical question is whether the distribution on important variables differs between men coming from high response Posts, compared with men from low response Posts." The authors then went on to state, "(they) examined the relevant distributions of many variables and found no differences that could have affected the study results materially." The Committee observed that such comparisons do not involve veterans who did not respond, and, therefore, fail to address the issue of non-response bias. In the opinion of the Committee, the authors' argument appeared contrived leaving the possibility of nonresponse bias a serious limitation of the study. Additionally, the authors failed to provide information about possible differential response rates between the Southeast Asia group and the control group. A differential response rate could be another source of bias.

The Committee also expressed reservations about the reliance upon self-reporting. The Committee observed that both the Centers for Disease Control's Vietnam Experience Study and the Ranch Hand study demonstrated the occurrence of bias when self-reporting was used to assess health effects. Stellman, et al., made no effort to verify the response by physical examination or medical record review.

Self-reporting bias may also affect the calculated exposure indices. There was apparently no attempt to validate the veterans' responses by comparing them to the pertinent military data.

The Committee concluded that because of its serious flaws in design, the study could not provide valid information about exposure to herbicides or to combat.

The Committee then reviewed the paper entitled, "Social and Behavioral Consequences of the Vietnam Experience among American Legionnaires." (Environ. Res. 47: 129-149 (1988).) The authors reported their analyses of the data acquired as described in the preceding paper. Combat and exposure to herbicides were considered as independent variables. The analyses involved multiple regression that included terms for combat and Agent Orange exposures as well as a term for their interaction.

The authors reported a wide range of adverse effects. Vietnam combat veterans were found to have significantly lower family income irrespective of their educational levels. Men who experienced high levels of combat intensity were found to be at greater risk for divorce or separation. With regard to sexual satisfaction, the authors found statistically significant terms in the multiple regression model for combat exposure and for its interaction with Agent Orange. The Agent Orange term itself was not significant. The authors stated, "This result, where herbicide is not an independent predictor but only enters the equation in an interactive term, suggests that herbicide effect which is manifest only at very high levels of combat is present." The authors found, however, that in similar analyses of parental and marital outcome only combat was significant; neither Agent Orange nor the interaction term were significant.

With regard to psychological well-being, the authors employed five measures: depression, anxiety, helplessness/hopelessness, degree of anger/irritation, as well as physical symptoms of depression. All five scales were significantly associated with combat. For Agent Orange exposure, however, none of the five scales, after adjustment for combat exposure, showed an association. Consumption of alcoholic beverages was the only other variable analyzed with respect to Agent Orange exposure. After controlling for the effects of combat, the results revealed no association.

The authors concluded, "(O)ur data give some indication that certain behavioral effects related to combat intensity may be exacerbated by concurrent exposure to herbicides and indicated the need for further exploration of this issue. . . . Further study, with a larger population, is necessary in order to control the confounding effects of combat more effectively and thereby estimate more accurately the effects of herbicides on psychological well-being."

The Committee commented that this study must be interpreted cautiously due to the serious flaws in its design and execution difficulties revealed in the previous paper. The Committee again identified major areas of concern: failure to validate the measure of Agent Orange exposure, potential bias due to the low study response rates, and the total reliance on self-reporting without independent verification of the data. It was also observed that the observed effects were often relatively small. The effects may be statistically significant but biologically unimportant.

The Committee then reviewed the paper, "Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam." (Stellman, et al., *Environ. Res.* 47: 150-174 (1988).) The authors noted that the study was not designed to investigate the possible relationship between herbicide exposure and the development of malignancies. The authors stated, "Because of the low background rates of all types of cancer in a group with this age distribution, the present study does not have the statistical power to detect such effects. Also for the majority of the cohort, insufficient time has elapsed for the natural latency of the disease process to have passed."

For health conditions, the investigators found statistically significant increased associations for herbicide handlers versus nonhandlers in regard to reported histories of hypertension, heart disease, ulcers, sensitivity to light, change in skin color and skin rash with blisters. With regard to dose response relationship, the authors found statistically significant associations of herbicide exposure with histories of benign fatty tumors, adult acne, increased sensitivity to light, and skin rash with blisters.

By means of factor analysis, the investigators determined five symptom scales; faintness, fatigue or physical depression, aches and pains, colds, and skin effects. For each of these scales, the mean among herbicide handlers was significantly higher than among nonhandlers. Multiple regression with terms for combat exposure, Agent Orange exposure and their interaction revealed statistically significant associations for each of combat and Agent Orange exposure with all five symptom scales. In these analyses, generally, combat exposure had the stronger relation compared with Agent Orange exposure.

For reproductive effects, the authors confined their analysis to never-married men born in 1940 or later. With regard to dose-response relations with Agent Orange exposure, after adjustment for level of combat, no significant association was found for: difficulty having children, delay in fathering (defined as the time elapsed between the end of military service and the first reported pregnancy of a spouse), number of pregnancies fathered, gender of liveborn children, and birth weight of live-born children. The one reproductive outcome where the investigators did find a significant association with Agent Orange exposure was miscarriages.

The authors commented that "while the manifold effects noted in this study span a wide range of outcomes, they are by no means haphazard, but in fact constitute a set of highly specific endpoints, most of which were initially chosen for study because of previous reports in the literature on exposure to stress and to phenoxy herbicides or TCDD. . . . These findings on physical and reproductive health are consistent with and mutually reinforce the conclusions of the other papers in this series concerning the pervasive effect of combat and herbicide exposure on the lives of veterans of the Vietnam war."

The Committee commented that this paper is subject to the same serious criticisms as the other studies in this series because of flaws in design and execution. Also, this particular study has the additional statistical limitations associated with making multiple comparisons.

Finally, the Committee reviewed the paper entitled, "Post-traumatic Stress Disorder among American Legionnaires in Relation to Combat Experience in Vietnam: Associated and Contributing Factors," by Snow, et al. (Environ. Res. 47: 175-192

(1988).) The authors stated four goals. Those were to examine (1) the frequency of combat-related PTSD and its components in a large, randomly selected sample of Vietnam veterans, (2) the nature of the precipitating factors that are necessary for PTSD to be experienced, (3) the etiologic roles of selected demographic and precombat health variables upon the development of PTSD, and (4) the stability of the PTSD symptom complex over time. The authors reported their various findings and concluded that their research provided strong evidence for the existence of PTSD in a large nonclinical sample of Vietnam veterans and that the symptoms were most likely to occur in individuals who had higher levels of traumatic combat exposure.

The Committee did not consider this paper to be relevant to its charge as it did not involve Agent Orange or herbicide exposure. The Committee noted that the study contained the same design flaws as the other papers and that, consequently, the authors' conclusions are open to serious question.

UNDER SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, January 19, 1989.

Hon. ALAN CRANSTON,
Chairman, Senate Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As promised in my recent letter, the Science Panel of the Domestic Policy Council Agent Orange Working Group (DPC/AOWG) has reviewed the American Legion Epidemiologic Studies of Vietnam Veterans (*Environmental Research* 1988; 47109-209). At a specially convened meeting of the DPC/AOWG on January 10, 1989, their evaluation was reviewed and received concurrence.

In sending you the review, I include the letter and summary of findings from the Chair of the Science Panel. Of particular note, we have included the individual opinions of each scientist by name. Missing from the individual opinions is that of the representative from the Congressional Office of Technology Assessment (OTA) who contributed much to our deliberations. OTA will be making its own review and report under separate cover.

In sending this report, I also bid farewell as the Chairman of the DPC/AOWG. The important work of research will continue under new leadership until this vital issue is resolved.

It has been a privilege to have served our Nation's veterans and to have worked with you in the process.

With warm personal regards,

Sincerely,

DON M. NEWMAN,
Chairman, Domestic Policy Council, Agent Orange Working Group.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
January 9, 1989.

Memorandum to: Mr. Don M. Newman, Chair, Domestic Policy Council, Agent Orange Working Group.

From: Chair, Science Panel, Agent Orange Working Group.

Subject: Review of the American Legion Study Papers Published in Environmental Research, December 19, 1988.

Because of concern about my own potential bias, I did not direct or participate in this review. The response from the Center for Environmental Health and Injury Control, Centers for Disease Control, were coordinated by Stephen B. Thacker, M.D., M.Sc., Assistant Director for Science, who also chaired the meeting of the Science Panel. My role was limited to convener and movement of paper to the various members of the Science Panel.

The Science Panel did not review the final article in the series entitled "Utilization, Attitudes and Experiences of the Vietnam-Era Veterans with the Veterans Administration Health Facilities: The American Legion Experience," in great detail. However, the Science Panel concurs with the reviews done by Dr. Han K. Kang and Dr. Lawrence B. Hobson of the Veterans Administration, which are attached as a portion of this communication.

Despite several requests, we were never able to obtain the protocol for this study. We did obtain a copy of the questionnaire but from a source other than the American Legion or the authors of the papers.

Included for transmission to the Congress is a summary review of the nine responders from the Center for Environmental Health and Injury Control, CDC, in addition to their individual reviews. Also included are reviews from Dr. Lawrence B. Hobson and Dr. Han K. Kang of the Veterans Administration; Dr. Manning Feinleib, Director, National Center for Health Statistics, CDC; Dr. Marie Sweeney from the National Institute of Occupational Safety and Health, CDC; Dr. Jeff Lybarger of the Agency for Toxic Substances and Disease Registry, Public Health Service; Colonel William H. Wolfe of the Department of the Air Force; Dr. John F. Young of the National Center for Toxicological Research, Food and Drug Administration; Dr. Donald Barnes of the Environmental Protection Agency; and Captain David Uddin of the Department of Defense, accompanied by a review prepared by Dr. Jerome Bricker, consultant to the Department of Defense, regarding the article, "Combat and Herbicide Exposure in Vietnam Among a Sample of American Legionnaires" by Stellman, et al, *American Journal of Industrial Medicine* 9:305-321 (1986), which apparently was the basis for the herbicide exposure cited in the American Legion studies.

The following is the review by the Science Panel.

The data presented in the American Legion report of the Epidemiologic Studies of Vietnam Veterans (Environmental Research 1988; 47:109-209) do not support the conclusions drawn by the authors. The study is seriously flawed due to major problems in study design and execution. First, there is potential selection bias due to nonrandom sampling and low response rates. Second, there is potential information bias due to poor questionnaire design and the analysis only of self-reported data without external validation. Probably of greatest concern, any observed association between combat or herbicide exposure is confounded by the investigators' use of subjective measures of combat and herbicide exposure. Combat exposure was not validated by comparison with military records. The herbicide exposure index used by the authors has not been validated, and based on the Agent Orange Validation Study and the Ranch Hand Study, does not accurately predict exposure. Because of these problems, the results of the American Legion report are of little or no value in further understanding the Agent Orange issue. The collective decision of the Government not to proceed with the CDC Agent Orange Study was correct and is not affected by the American Legion report.

Interpretation of the findings are made more difficult by the absence of standard tables on demographic distributions for the original sample, the participant sample, or the sample of veterans that provided sufficient information for estimation of herbicide exposure. Some of the information provided on service experience could have been cross-checked by reviewing discharge records for at least some veterans. The American Legion reports as well as the accompanying editorial imply erroneously that evaluating herbicide exposure in this study is not much different than in retrospective studies of exposure to workers where individual exposures are not measured. The analogy is misleading because in well-conducted occupational studies, one knows from objective records that the employee was in an area of potential exposure and that workers are exposed during operations. In contrast, in the American Legion Study, we do not know if veterans were within miles of a sprayed area, and we do not know if any dose, let alone a measurable dose, was received.

Discussion of the findings of the American Legion study is incomplete. Findings from the Vietnam Experience Study (VES), the Agent Orange Validation Study, and other important studies should have been addressed more thoroughly. For self-reported health outcomes, the results are similar to those obtained with the VES questionnaire. As with the American Legion study, almost all outcomes in the VES were reported more often by Vietnam veterans than by other Vietnam-era veterans. Those Vietnam veterans who reported either handling herbicides or having more combat experience also reported higher rates of most outcomes. Most of the verifiable self-reported conditions, however, were not substantiated by objective evidence obtained during the physical examination. It is not clear why the authors of the American Legion papers, as well as the author of the accompanying editorial, ignore these available data which would have helped them interpret their subjective data.

When one views the full range of the studies on Vietnam veterans, including those with detailed objective data, clear and consistent conclusions emerge:

(1) Many Vietnam veterans report psychologic and physical symptoms. Psychological abnormalities have been demonstrated by objective evidence to be slightly more prevalent in Vietnam Veterans. Combat-related Post Traumatic Stress Disorder has been shown to be a problem in several studies. Almost all physical abnormalities have not been confirmed.

(2) Many Vietnam veterans also were in and around herbicide or pesticide applications in Vietnam, and they have subsequently been told about dioxin and its "extreme" toxicity.

(3) Many Vietnam veterans, therefore, attribute their current symptoms to past herbicide exposure.

(4) Very few Vietnam veterans, unless occupationally exposed (e.g., sprayer or mixer), have been shown to absorb significant quantities of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) (and therefore other harmful herbicide constituents).

Because of the selected and limited exposure of soldiers in Vietnam, studies of adverse effects produced by herbicide exposure cannot be efficiently done from general samples of Vietnam veterans. Studies which

can provide more precise measures of the effect on humans of TCDD are in progress in the small number of people with serum levels of TCDD's markedly above the background due to heavy and repetitive (usually occupational) exposure. The major studies are the Air Force Ranch Hand Study, the NIOSH Mortality and Morbidity studies, and the studies around the Seveso incident in Italy. Because of the documented absence of exposure in ground troops in Vietnam, even if these ongoing studies find exposure-related health effects, they cannot be applied directly to the vast majority of Vietnam veterans.

VERNON N. HOUK, M.D.,
Assistant Surgeon General, Director, Center for Environmental Health and Injury Control.

REVIEW OF THE AMERICAN LEGION STUDY OF THE HEALTH OF VIETNAM VETERANS

(Environmental Research 1988;47:109-209)

(Prepared by: Stephen B. Thacker, M.D., M.Sc., Assistant Director for Science, Center for Environmental Health and Injury Control, Centers for Disease Control, January 4, 1989)

SUMMARY

The data presented in the American Legion Study of the Health Effects of Vietnam Veterans (Environmental Research 1988;47:109-209) do not support the conclusions drawn by the authors. The study is seriously flawed due to major problems in study design and execution. First, there is potential selection bias due to non-random sampling and low response rates. There is potential information bias due to questionnaire design and self-reporting data without external validation. Finally, probably of greatest concern, any observed association between combat or herbicide exposure without biological validation of herbicide exposure. The herbicide exposure index used by the author has not been validated, and based upon the Agent Orange Validation Study and the Ranch Hand Study, that index is very likely to be flawed. Together, these problems make interpretation of the results of the study difficult.

The findings are made more difficult by the absence of standard tables on demographic distributions for the original sample, the participant sample, or the sample that provided sufficient information for estimation of herbicide exposure. Some of the provided information on service experience could have been cross-checked by reviewing discharge records for at least some veterans. The accompanying editorial implies erroneously that evaluating herbicide exposure in this study is not much different than retrospective studies of exposure to workers where individual exposures are not measured. The analogy is misleading because one knows from objective records in occupational studies that the employee was in an area of potential exposure, and that workers are exposed during operations. In the American Legion study, we do not know if veterans were in spray areas at the time of spraying, and we do not know if any dose, let alone a measurable dose, was received.

Discussion of the findings of the American Legion study is incomplete. Findings from the Vietnam Experience Study (VES), the Agent Orange Validation Study, and other important studies should have been addressed more thoroughly. For health outcomes, the results are very similar to the questionnaire component of VES. As with the American Legion study, almost all outcomes in the VES are reported more often by Vietnam veterans than by other veterans. Among Vietnam veterans, those who report either handling herbicides or having more combat experience report higher rates of most outcomes. Most of these associations, however, were not substantiated by the physical examination, and it is likely that in most cases the higher rates were due to recall bias. This is also probably true in the American Legion study. It is not clear why the authors of the American Legion papers, as well as the author of the accompanying editorial ignore available data that would have helped them interpret their subjective data.

When one views all of these studies, including those with very costly objective data, there is a clear and consistent alternative set of interpretations which is not at variance with any of the data reported to date by any study group:

(1) Many combat veterans have psychologic and physical symptoms.

(2) Many of them also were in and around herbicide applications in Vietnam, and they have subsequently been told about dioxin and its "extreme" toxicity.

(3) Many of them, therefore, attribute their current symptoms to past herbicide exposure, when complaints related to physical findings were objectively evaluated in the VES, most differences between the Vietnam group and the non-Vietnam era veteran could not be substantiated. Psychological abnormalities were found to be slightly more prevalent in Vietnam veterans. Combat-related Post Traumatic Stress Disorder has been shown to be a serious problem in several studies.

(4) Very few Vietnam veterans, unless occupationally exposed (e.g., sprayer or mixer), have been shown to absorb significant quantities of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) (and therefore other harmful herbicide constituents) from the types of casual or non-repetitive exposures they experienced.

Because of the selected and limited exposure of soldiers in Vietnam, studies of adverse effects produced by herbicide exposure cannot be efficiently done from general samples of Vietnam veterans. Studies which can provide more precise measures of the effect on humans of TCDD are in progress in the small number of people with heavy, and repetitive (usually occupational) exposure. The major studies are the Air Force Ranch Hand Study, the NIOSH Mortality and Morbidity studies, and the studies around the Seveso incident in Italy. Preliminary reports for two of these studies suggest the hypothesis that TCDD is substantially less toxic to man than to guinea pigs. The NIOSH studies are not yet reported.

BACKGROUND

In the December 1988 issue of Environmental Research a series of five papers appears reporting on a study of the health of Vietnam era veterans who are members of the American Legion. Funded by the American Legion and conducted by investigators at Columbia University, the first four papers describe the results of a cross-sectional study of Legionnaires from six states relating health problems to the Vietnam exposure, in particular exposure to combat and herbicides.[1 2 3 4] The fifth paper reports on Legionnaires' utilization of Veterans Administration health facilities.[5]

The results of the American Legion study are in many ways consistent with those reported by the Centers for Disease Control (CDC) as they relate to veterans perception of illness and its relationship to the Vietnam experience.[6 7 8] There are, however, striking differences when the American Legion researchers attempt to relate herbicide exposure to specific adverse health effects. Any epidemiologic study can be criticized, and what must be decided is whether sufficient care has been taken in the design, implementation, analysis, and the interpretation of the results of the study, and whether or not the methods of a particular study will support the conclusions. In the American Legion studies there is sufficient concern with these issues to question the validity of the results of the study and their interpretation. The following discussion will spell out these concerns with the first four reports as they relate to sample selection, representativeness, questionnaire construction, measure of exposure to herbicides and combat, data analysis, and selected outcomes. We will not discuss the utilization study.

SAMPLE SELECTION

The authors chose a cross-sectional sample from American Legion membership roles from six states (CO, OH, MD, PA, IN, and MN). After exclusion of those with 20 or more years of membership, one-seventh of the records were selected at random. Each man in the one-seventh sample was sent a postcard to indicate if he was a Vietnam Era veteran, since this information is not included in Legion membership records. Those who did not return the card (an unspecified proportion) were contacted by the Post Adjutant to identify those known to be non-Era veterans. Vietnam Era veterans and those of unknown status were then contacted by 'volunteer researchers' to determine actual service location, and to encourage participation.

From these papers and a 1985 document,[9] it seems that the sample selection is based on an assumption that about 15 percent of all Legionnaires are Vietnam-era veterans. From the earlier report, we know that 85,000 men were included in the 1/7th random sample from all 6 states, and that 50,000 returned the postcard indicating time of service. The remaining 35,000 were apparently classified by volunteer researchers. 12,588 men were identified as Vietnam-era veterans and 6,810 completed questionnaires. None of the "attrition" in the population is broken down by cohort status.

It appears, however, from statements elsewhere in the papers that there was more to the sampling procedure than this. The authors state that they oversampled Vietnam veterans (taking 15 of each would indeed be slight oversampling of Vietnam veterans), yet their final sample has 42-percent Vietnam veterans and 58-percent non-Vietnam veterans. This is precisely what you would expect without oversampling. The first paragraph of the first paper says that 32 percent to 48 percent of era veterans served in Southeast Asia.

The authors also say nothing about differential response rates between the two groups. In the Vietnam Experience Study (VES), the Vietnam group was more likely than the comparison group to participate in the study. If there had been also a higher response rate among Vietnam veterans, it is even less clear how the investigators did

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Footnotes at end of article.

their sampling. In the VES, we found only one factor that differentially influenced participation rates in the examination component between Vietnam and non-Vietnam veterans. Non-Vietnam veterans with higher education levels were more likely to participate in the examination, perhaps because they understood the importance of their participation.

The preliminary 1985 report of these data[9] raises additional questions. The description of the sampling design differs somewhat from that described in the *Environmental Research* series of papers, although we believe they are describing the same exact study. This earlier report, however, says the 770 research volunteers were given the names of only those legionnaires who did not return postcards. They were still said to have been given 200 names each. This 1985 report also says that 12,588 men were identified as Vietnam veterans and mailed questionnaires. The 1988 report says that 2,858 subjects who served in Southeast Asia returned questionnaires. Since their response rate is reported to be between 52 percent and 64 percent for both cohorts combined (Southeast Asia and other), it is difficult to understand precisely what was done.

REPRESENTATIVENESS

The authors admit that they do not have a "representative" sample of Vietnam Era veterans, since American Legion members represent the "solid middle section of white America". Demographic data on both the total sample and respondents are sketchy, but the authors did indicate that 98 percent of the participants were white. The authors also indicate that participants have been resocialized sufficiently to join the American Legion.

There are further reasons to doubt that the survey participants were representative of Vietnam veterans:

1. In the Agent Orange Validation Study (AOVS), interviewed veterans who believed they had health problems or were exposed to herbicides were clearly more likely to go for medical exam than those who believed they were in good health or had little exposure to herbicides.[10] It is plausible that the same bias would occur in the American Legion Study in those willing to spend time filling out a long questionnaire.

2. Bias could be introduced by the use of volunteers to determine service location and establish contact. Recruitment of volunteers for assistance may have its place in studies with a strong *a priori* hypothesis known to the volunteers. In this case, however, the hypothesis is quite clear to the volunteer researchers, to the American Legion, and to the participants. Vietnam veterans with health or psychological problems and non-Vietnam veterans without problems could have selected themselves for the study by returning the postcards. Even more disturbing, the volunteer researchers could have selectively influenced participation. The researchers were given "goals" to identify 15 Southeast Asia and 15 non-Southeast Asia veterans for the study. With these expectations, it is easy to hypothesize that a well-meaning volunteer could have chosen the "worst" Vietnam veterans and/or the "best" non-Vietnam veterans.

3. The relatively low participation rate could lead to bias and a non-representative sample.

4. The definition of the eligible and final study population is inadequate. The reader should be given the following information: the size of the original total population sampled and the ½th random sample; the number of men comprising the one-seventh random sample of members with less than 20 years of continuous membership; the numbers of Vietnam and non-Vietnam veterans to whom questionnaires were sent; the number from this sample who returned postcards, who were ultimately contacted, and who could never be reached in any way and remained status unknown; of those who were contacted, how many participated, how many refused, and how many were lost to follow-up at this stage; and as much of the above as possible should be given by cohort status. With these numbers, one can compute the magnitude of losses and thus provide an assessment of the adequacy of the final respondent sample. The authors do not explain why they used these unorthodox recruitment procedures or why these procedures would not introduce bias in a study of this type.

The authors fail to use standard, accepted methods of presenting data. The extent of the potential bias introduced by this sampling scheme cannot be evaluated, because the authors do not provide baseline demographic information on the original sample and the selected population. Even basic information, such as age distributions by type of service (Army, Navy, etc.), are not provided. Information on at least some veterans, such as place of service, service dates, rank, and discharge status could have been verified from discharge records, yet the authors did not do so. The same holds true of cohort comparisons among respondents. The reader should see, for example, the age, race, education, and income distributions for Vietnam vs. non-Vietnam veterans and also for the different combat cohorts since so many comparisons are made by combat status. This is especially important because so many of their presented analyses are essentially crude and do not control for all these important variables.

The authors could also compare their sample of veterans to veterans from other studies if they want to examine representativeness. They say their study group is 98.5 percent white; this obviously is not representative of the general population or of the racial distribution found in other veteran studies. They say that their study group is "representative of the solid 'middle section' of white America, with its relatively high educational and income level and marriage rate" (p. 147). This statement may be a little misleading. Compared to other veteran studies that included more non-white veterans,[6 7 8 11] Legionnaires appear to have no more education than the veterans in the CDC study and substantially less than veterans studied by Card. The marriage rate among the Legionnaires may in fact be very nonrepresentative. Using the numbers of "ever-married" veterans (p. 136), the rate of ever married is 68 percent in both cohorts. This is extremely low; the rate in the VES study is about 91 percent and in the Card study about 93 percent.[11]

The authors do report on different response rates by state. On p. 124 they give it as ranging from 52.5 percent in Pennsylvania to 64.1 percent in Minnesota. (This is apparently inflated somewhat—bad addresses are removed before calculating the rate.) On p. 179, however, response rates range from 58.1 percent in Pennsylvania to 64.6 percent in Minnesota. These data become even more puzzling in Table 4 (p. 125), which shows more total respondents from Minnesota than from Pennsylvania. Since Pennsylvania has three times the populations of MN, either the investigators weighted the sample by state or Minnesotans are far more likely to join the American Legion than Pennsylvania veterans.

The authors claim that "representativeness of study subjects is intimately related to their response rates," and then proceed to give us response rates by state instead of by cohort. The total response rate in this study is not good to begin with (about 54 percent), and if the rate varies significantly by cohort, this could be a serious source of bias. The authors exclude from the denominator of their response rate those questionnaires "returned for bad addresses or otherwise undeliverable." This is very unconventional and will inflate the response rate a little or a lot depending on the number of veterans who could not be tracked down. So, the response rates presented are already inflated by some unknown degree.

In order to address potential bias in representation, the authors compare "the distribution of important variables" between men coming from high-response posts and men from low-response posts in an effort to address the question of representativeness of their sample. Because they did not find differences between these "high-response" and "low-response" subjects for these variables, they conclude that they have little response bias. This is a meaningful analysis only if you make the unsubstantiated assumption that respondents from "low-response" posts are more like non-respondents than respondents from "high-response" posts. The observation that age was related to response rate could, on the other hand, completely explain inter-post differences (i.e., respondents from all posts are similar, but some posts have higher rates of non-response because their membership is older). The authors also suggest that their sample is not biased because reported herbicide and combat levels by posts with high response rates are comparable to those with low response rates, although their outcome data suggest otherwise. Nearly 9 percent more men from high response posts report excellent health than those from low response posts. This suggests that those with the most health or psychologial problems could have been recruited first, with low response posts never getting around to recruiting other veterans. With their low response rates, it is quite possible that socio-demographic differences attributed to Vietnam service may be heavily influenced by differential motivational factors for participation. Finally, the authors try to address bias statistically, but tests of statistical significance probably are not appropriate for assessing selection bias. Such an approach to confounding, on the other hand, is well accepted.[12]

QUESTIONNAIRE CONSTRUCTION

The questionnaire is designed so that information on combat, herbicide exposure, symptoms of post-traumatic stress disorder (PTSD), social factors upon return, and helpfulness of the Veterans Administration were collected before the outcome data. Structuring this questionnaire in this way may bias respondents to falsely associate exposure with illness. Also, the tone of the questions implies that the veterans did have problems upon return. The herbicide section even includes questions on acute symptoms following exposure, thereby reinforcing to the respondent the potentially harmful effects of exposure.

The use of a self-administered questionnaire has a number of important limitations that could affect the quality of the re-

sponses: the respondent can take as little or as much time as he wants to complete the questionnaire; the absence of a trained interviewer precludes the ability to answer clarifying questions and to encourage completion of all questions; and the respondents can ask family, friends, or oher veterans for their opinions and help in filling out the questionnaire.

HERBICIDE INDEX

As Lilienfeld recently stated, "It is the assessment of exposure that is the cornerstone of any environmental epidemiologic study . . ."[13] Thus, the validity of the findings in this series of papers depends on the accuracy with which exposure was assessed in this study. We reviewed carefully the original paper describing the exposure estimation procedure[14] as well as the summary of exposure estimates for the men in this study. Especially in light of the findings in other publications, the authors of these studies must show that they have overcome the recognized difficulties and obtained valid exposure measures. We believe that their measures are unreliable for the following reasons:

1. Estimates of exposure are based completely on veterans' recollection of their locations and dates of service, without validation from military records.

2. The authors' procedure greatly overestimates the relative exposure of veterans who were more than 1-2 km from known herbicide sprays.

3. The procedure implicitly assumes that the only exposure of concern was from contaminated soil and perhaps water, which may result in a substantial overestimate of exposure for those within 2 km of a documented spray.

4. There were no comments concerning calculation of time periods for which no location was reported.

5. The authors ignore demonstrated limitations in indirect indices for dioxin exposure.

6. The exposure classifications appear arbitrary with no clear biological basis.

The following are detailed comments on these issues:

1. There are several concerns about exposure estimates based on recall not validated by historical records. Both published manuscripts report that exposure was estimated by asking veterans the dates they had served at about 100 locations in South Vietnam. First, because only 73 percent of Vietnam veterans reported enough location data to estimate herbicide exposure, for all analyses using this variable, at least ¼ of the data are missing. Second, it is difficult to remember specific dates and places nearly 20 years after the fact. Third, the questionnaire listed the names of base camps, villages, (along with a small map of Vietnam) yet much of the herbicide exposure may have occurred in more remote areas. Fourth, even with accurate recall of location and time, veterans would have difficulty giving correct exposure information. Veterans would think they were most heavily exposed when walking through defoliated areas, although by that time, the chemical constituents would have decomposed. In contrast, veterans would have been most exposed shortly after spraying and before chemical decomposition, when the jungle looked relatively normal. Using the model developed by the American Legion investigators, it would not be unusual for veterans to preferentially remember time spent in defoliated areas, and with the one-year half-life for herbicide in the environment built into the model, these men would be considered exposed.

For an alternative measure of personal exposures, veterans were asked if they had ever handled herbicides. Veterans could have responded positively if they handled many different types of chemicals, which they now presume were herbicides. Most of the chemicals used near base camps, etc. were insecticides, not herbicides. Thus, the index could represent belief in exposure to Agent Orange rather than actual exposure. In good faith, veterans could think they were exposed because they walked through defoliated areas, and because they sprayed or were otherwise exposed to unknown chemicals. On the other hand, this variable should not be discounted simply because it does not reflect objective exposure. The CDC studies found that reported exposure is associated with many adverse outcomes. The AOVS, however, found no correlation between reported exposure and objective exposure as measured by serum TCDD levels, suggesting that the association between reported exposure and adverse outcome is not due to exposure to TCDD.

The authors report that they obtained adequate data from 73 percent of the respondents to calculate a score, but they do not define what constitutes adequate. Because of the long half-life the authors used, their exposure measures probably do not depend very much on accurate date information. The VES showed that many soldiers moved frequently. Possibly their data are least adequate for those Army and Marine veterans who moved the most (and might be the most interesting group to study). It would be most adequate for those who remained in one spot for the war. The authors give no information on this. They do say that the entire questionnaire took 45–60 minutes to complete, including health status and feelings about the Veterans Administration, so that veterans could not have taken too long on the map portion. The score reflects where they served in Vietnam and when, which may be a surrogate for occupational specialty and branch of service (i.e., these are potential confounders for herbicide exposure). The results of the AOVS indicate that this exposure score, as well as epidemiologic exposure measures developed by CDC, probably has nothing to do with exposure to Agent Orange.

The authors should have tried to verify veterans' recollection of where they served by validating a sample of questionnaires with military records. Such records were used in the AOVS; they are the dates during which a veteran served in various units (from his military record), and the locations of those units on those dates (abstracted from military records by the Environmental Support Group).[10] In addition, the AOVS showed that there is no relation between current TCDD levels and relative opportunity for exposure according to a wide variety of scores derived from the military records or from self-reported exposure. Vietnam veterans whose main job was not handling herbicides have tissue TCDD levels similar to unexposed civilians of the same age. Thus, there is no evidence that ground troops who served in South Vietnam had meaningful exposure to TCDD.

2. Simulated Ranch Hand sprays at Eglin Air Force Base, Florida, showed exposure decreasing far more rapidly (as a negative exponential), with negligible exposure more than 1-2 km from the center of the spray path.[15] The exposure measure used in the American Legion study, however, allows for substantial exposure up to 15 km from a spray, with exposure decreasing as the inverse of the distance from the spray. Most perimeter sprays had no more dispersion than did Ranch Hand sprays, since most of the perimeter sprays would have been from ground level or low altitude. In contrast to this new report, for most scores the AOVS used only locations within 2 km of a spray to estimate exposure, a procedure that is in much better agreement with the available data.

In addition, some base camps in South Vietnam were quite large, so that perimeter spraying would not necessarily result in significant exposure for all veterans stationed at that camp. While no details are given, it is possible that each base camp is represented as a point in computing potential exposure in this report. In their 1986 report, the authors show that, for 6 base camps, there are far more herbicide spray "hits" 5-15 km from these base camps than within 5 km.[14] These considerations suggest that the authors may have substantially overestimated herbicide exposure for many veterans, in contrast to their statement that "Computed exposures will thus tend to underestimate true exposures."

3. The exposure measure in the American Legion study assumes a half-life of 1 year for the decay of TCDD in the environment. This is roughly consistent with the experimental data on the half-life of TCDD absorbed to soil and similar to the half-life of 5 years used to compute the "slow" or E_3 score in the AOVS. However, this half-life is about two orders of magnitude longer than the estimated half-life of several days for TCDD on vegetation. The Stellman exposure measure, therefore, assumes that the significant source of exposure is soil and gives an estimated exposure far greater than that which would be obtained if the important source was TCDD on vegetation. In fact, the relative importance of vegetation vs. soil is unknown.

The distribution of their herbicide index basically shows most veterans clustered at the low end with a few scattered out on a long tail. Even if one were to make the assumption that this index (based on HERBS tapes and self-reported location) has any validity, there is still no discussion of what the levels of the index might represent in biological terms. Until and unless some type of method of validation can be applied, the value of any such index is completely unknown. Certainly, past study of epidemiological and biological markers has taught us that and the authors should at least acknowledge the limitation of such markers.

4. There were no comments concerning calculation of scores for time periods for which no location was reported. If these periods were merely assigned a zero, then the analysis should have been adjusted for the number missing days. Otherwise results could be biased: men who report more illnesses might also report locations for more days, receive a higher score, and artifactually create the impression of an association between health outcomes and herbicides.

5. The half-life of TCDD in humans has been estimated at 7.1 years (95 percent confidence interval 5.8 to 9.6 years) which means that only 2-3 half-lives have elapsed since the Vietnam War.[4] Measurements in Ranch Hand Veterans have demonstrated that selected veterans who were exposed to Agent Orange in Vietnam have measurable and quantifiable serum TCDD levels which are above background levels.[16] When the same serum TCDD measurements were

made on ground troops who were classified as highly exposed by any one of five exposure indices including self-reported exposure, the supposed highly exposed group had a distribution of serum TCDD levels almost identical to veteran controls with no Vietnam experience.[17] The large set of data on Vietnam veterans in the AOVS with a variety of exposures has established the serum TCDD measurement as the current preferred method of assessing TCDD exposure in Vietnam veterans.

6. The criteria for "high," "medium," and "low" exposure classifications were not given. However, from the frequency distribution (p. 120) and numbers in the tables (pp. 158-159) it appears that "high" included anyone with an exposure level at or above the mean, i.e. 0.36-1.60. That means that, with the unreliability of the question responses, there was probably little difference between the "medium" (0.10-0.36) and "low" (0.0-0.10) groups.

Of note, the U.S. Air Force formulated an Agent Orange exposure index for Ranch Hand veterans, based on excellent records of the actual activities of the Ranch Hand veterans during their tours of duty. After comparing their index with measured serum TCDD levels on a subset of Ranch Handers, the Air Force decided the index was inadequate and that they should obtain a serum TCDD level on each of the Ranch Hand veterans. The blood samples have already been collected and the analyses are in progress. It is discomforting, therefore, that the authors describe their system as the gold standard, while referring to others as "yet to be validated exposure methods such as analysis of dioxin residues in tissue collected some 15 years postexposure." [11]

COMBAT INDEX

In their studies the American Legion investigators used a self-reported combat scale analgous to the one used by CDC. Their computation of an herbicide exposure opportunity index was based on the same sets of spray data used by CDC, and their OE3 formula is analogous to the E2 score used by CDC in its TCDD validation study in III Corps area veterans. The main methodologic difference was that in their questionnaire each veteran was given an annotated Vietnam map, with place names and military unit names and was asked to recall and record his location by month and year. With time limited to month, they were forced to use the assumption of a rather slow TCDD decay curve in their OE3 formula. In its TCDD study CDC used military records to identify the unit and probable location of each veteran for each day, thus allowing the use of both rapid and slow decay models for separate analyses.

The combat index used does not give sufficient detail to serve as a major exposure variable. The study includes groups other than ground troops, but focuses only on ground troop experience. For instance, fixed wing pilots or medical personnel could have had traumatic combat-related events, that are not described by this index. The combat index has limitations, even if it is confined to ground troop experience. The questions are redundant, and their intent is unclear. For instance, shooting one Vietnamese could elicit a response to 5 of the 8 questions. The index focuses on frequency not intensity. Seeing a dead man on five separate occasions could get more weight than being involved in one large ambush. The scoring procedures are also not weighted according to the severity of the experience. For instance, finding yourself in a situation you thought you would never survive receives equivalent weight as firing your weapon or seeing dead enemy. None of the combat indices, including the one used in the VES, are ideal but since combat is their major exposure of interest, they could have asked a more extensive battery of questions rather than a screening battery.

There were inconsistencies regarding the number of veterans invarious combat classifications. On page 119, for example, it was stated that 2087 Southeast Asia veterans had combat scores. However, on page 160 the total number of Southeast Asia veterans with combat scores was 2845, a number which apparently did not include herbicide handlers. This is unlikely since the total number of Southeast Asia veterans who were not herbicide handlers was only 2858−102=2756.

Some of their conclusions based on these indices are open to question. Higher combat score correlates with lower income Yet, given the cross-sectional nature of the data, it is impossible to distinguish cause from effect. The authors conclude that "significant family income loss has occurred among Vietnam combat veterans", but possibly those with lower income for whatever reason are more likely to score something as "very often" rather than "rarely, sometimes, or often". The finding of higher separation and divorce rates among the high combat group could be attributed to the same circular logic. In this section an observation that seems to reflect the authors bias is that divorce rates were 4 times as high in the high combat group as in the non-Vietnam group, although the percentages given, 60.4 percent vs. 28.4 percent (p. 136) do not reflect this.

The herbicide and combat indexes are correlated, and the herbicide index drops out in some multivariate analyses. Because of the resulting multicollinearity, the standard errors on the coefficients (not given) would be quite large. Although the resulting coefficients may be significantly different from zero, they are unlikely to be significantly different from each other. Therefore, their relative "importance" would be difficult to assess. Further, because of the instability of these estimates, these kinds of regressions often change radically when more subjects are added to the analyses. In addition, if combat is subject to misclassification and combat leads to certain health outcomes, then residual confounding may exist even after adjustment for the combat score. Thus, residual confounding could account for apparent association between exposure to herbicides and adverse health outcomes, each after adjustment using the combat score. The finding of correlation of both indices with self reports of physical and reproductive health problems is consistent with the VES. In the VES, however, these results were found on the interview component and almost never substantiated by the physical and laboratory exam.

There are two potential sources of bias with these analyses that the authors do not acknowledge or address. Because the combat index relies on self-reported data, it may not reflect actual combat; we know only that it reflects perceived combat, and the data should be analyzed and interpreted in that light. Second, even if the combat index validly reflects combat, the men who saw more combat may have been different going in than the men who saw little or no combat. The Louis Harris study of attitudes toward Vietnam era veterans found that "among those who served in Vietnam, those with less than high school educations at induction were three times as likely to see heavy combat as were those with college educations".[18] They concluded that "combat assignment processes . . . served to mirror the underlying class discrimination of the society itself". If this is the case, then many of the socio-demographic, behavioral, and health differences seen by combat status in the American Legion study may be due to preexisting differences in the men who saw different levels of combat. This issue could have been better addressed by more adequate control for all available covariates in the analyses. The general lack of specificity associated with combat (i.e., it is related to almost every reported health outcome) increases the likelihood of a reporting or selection bias.

The three combat exposure groups and the three herbicide exposure groups may differ appreciably with respect to other characteristics that are associated with reporting of outcomes. For example, Navy and Air Force veterans make up about 49 percent of the Low combat exposure group but only 10 percent of the High exposure group (Table 3 and Figure 5). Although not shown, the military rank profile of those exposure groups could also be quite different. Both branch of service and military rank could be important correlates of outcome reporting and should have been taken into consideration in comparisons among the combat and herbicide exposure groups. Other baseline traits that would be important to take into consideration are military occupational specialty and whether a man was drafted or volunteered for military service. Another point that should have been addressed is the possibility of response bias or selective reporting of outcomes by Vietnam veterans. Further, it is not possible from a cross-sectional study that relies on self-reported exposures (particularly combat) and self-reported outcomes to establish with certainty whether the exposure led to the outcome or vice versa.

ANALYTIC STRATEGY

There are several points of concern in the analysis:

Crude associations are reported in most instances. Joint effects of combat and herbicide exposure were assessed (and hopefully the 'non-significant' main effect of herbicide exposure was left in the model with and herbicide-combat cross-product term), but collected data on demographic variables or smoking, drinking and drug use were not included in multivariate models.

Dates during which the study was conducted were not given.

The possibility of residual confounding of the association between the herbicide index and various health outcomes by combat, age, etc., does not appear to be fully appreciated.

Power calculations leading to choice of sample size including the achieved power for various prevalences are not given. Is power for herbicide exposure clearly better than the Air Force Ranch Hand Study, where there are clearly exposed and unexposed groups?

No mention is ever made of missing data and how they are handled. Since the numbers are not consistent throughout the papers, the authors appear to have chosen to ignore this issue in the analyses. Depending on the extent of missing data, this could represent a real bias. For example, the analysis of average weekly consumption of alcohol is based on 1824 (64 percent) non-Viet-

nam veterans and 3254 (83 percent) Vietnam veterans. Because of a substantial amount of missing data and a large difference between the two cohorts, and validity of any comparison is questionable. For many outcomes, numbers are not given so no estimate of missing data can be made.

The authors classify persons as "In-Country" or not. There is no discrimination as to how long they were "In-Country" and no controls for this factor in any of the analyses in this report. A related problem is the use of birth year for analyses, not year of service in Vietnam. As we know from VES, the age of the veteran at time of service, and the actual year in which that service occurred were important factors in all of the analyses. The American Legion investigators confound both of these issues in their design.

The data did not demonstrate "that sufficient numbers of troops are available and identifiable for epidemiologic study of herbicide effects". This statement is a leap of faith from very limited and questionable exposure data. From Figure 3 (p. 120) it appears (assuming their herbicide exposure index is measuring exposure) that there might be insufficient numbers of men with high exposure scores.

The authors say that the "internal consistency of the findings also lends credibility to the study". However, nowhere do they present data that support what is really meant by internal consistency (i.e., that a particular association is present in various subgroups of the total study group). By internal consistency, the authors seem to mean that there was a large number of positive exposure-response associations for combat and herbicides. This is circular reasoning, using the health outcome results to justify the validity of the exposure measures.

While the findings in Table 1 (p. 156) are consistent with the results of the VES telephone interview component, results for the infrequent conditions should have been tabulated for descriptive purposes and for completeness. Also, all conditions should be shown, not just those that were reported more frequently in the Vietnam veterans.

Why would herbicide handlers have the highest mean combat score in view of their job distribution in Table 2 (p. 121)?

There is no discussion of why the herbicide handler group does not show an excess of adult acne (OR=0.99) whereas the High herbicide exposure group does show an excess for this condition (OR=1.45) (Tables 2, 3).

There is no discussion of the curious finding that "benign fatty tumors" is the only reported condition that is positively associated with both combat and herbicide exposure.

Despite the large number of statistical tests presented, the authors fail to discuss the problems of multiple comparisons in the same data set.

Psychological scales: Most scales chosen represent general adjustment and not specific diagnoses. The scales are all said to be reliable (e.g., repeatable), but they do not provide documentation of their reliability or any discussion of their validity.

The authors should have pointed out that the correlations obtained, while statistically significant, are weak (Tables 6 and 8).

There is a tendency of the authors to downplay, not to recognize, or to ignore the limitations of this study and to make only selected references to available knowledge in the literature such as the VES and the AOVS.

FINDINGS

Both the American Legion studies and the CDC studies found that self-reported combat exposure and self-reported or computed herbicide exposure opportunity are correlated, and that combat exposure correlates with subsequent anxiety, depression, post-traumatic stress syndrome, and certain self-destructive behaviors. In other words, we agree that combat tends to leave long-lasting "invisible wounds." Furthermore, both sets of studies found that combat-exposed people (often also believing that they were exposed to herbicides) tend to report more physician visits and more "yes" answers to a wide variety of symptoms and illnesses, including more miscarriages for their wives. Because of its larger budget, CDC was able to seek objective confirmation of some of the subjective data. Upon physical examination and laboratory tests, most of the differences between the Vietnam and non-Vietnam groups disappeared. Further, CDC found low residual TCDD levels (used as a marker of prior herbicide exposure) in the Vietnam veterans, not different from the levels found in the non-Vietnam group. Among the Vietnam veterans, there was no correlation between TCDD levels and either self-reported herbicide exposure or exposure opportunity scores calculated several ways.

High residual TCDD levels are being found by CDC's laboratory, however, in Air Force Ranch Hand veterans exposed occupationally, in civilians who are former herbicide production workers, in people with heavy environmental exposures in Missouri, and in people who were heavily exposed to the fall-out of an explosion in a herbicide factory in Italy. This last group has residual TCDD levels several orders of magnitude higher than the highest level found either in the CDC studies or in Vietnam veterans studied by the New Jersey group, yet after 12 years chloracne is the only ill-effect seen so far in the Italian group.[19]

Reproductive outcome

The reproductive findings are confined to ever-married men born in 1940 or later. The restriction on birth year is done in an attempt to "eliminate reproductive experiences that occurred before the Vietnam era". This is a very crude way to accomplish this goal and is subject to significant misclassification. Many children with no opportunity for "exposure" will be included and others who were conceived after service will be eliminated. In order to obtain meaningful results the investigators must have the veterans' dates of service and the dates of the reproductive events; all children and pregnancies should be included or excluded based on these dates, not on the birth year of the veteran. The authors found that Vietnam veterans reported more difficulty having children than non-Vietnam veterans, but both cohorts reported fathering the same average number of pregnancies. These results are similar to those of the VES.

The analysis of miscarriages is very difficult to evaluate because only a subset of veterans are included in the analysis. The report starts out with 5097 veterans who were ever-married and born 1940 or later. However, the miscarriage data are based on 6622 "birth outcomes" reported by 2950 veterans. There is no explanation why over 40 percent of the eligible veterans have been excluded from the analysis. The Table 10 (p. 166) note says that the restrictions on the veterans now include discharged 1974 or earlier, with the first pregnancy reported subsequent to discharge, but there is no explanation of why these restrictions are needed or how many men were lost from each cohort through the application of these restrictions. Thus, their data show a great deal of underreporting of this event in both cohorts (as did the VES data and most data that are based on fathers' reports). Clearly, there was a great deal of underreporting. Both the retrospective nature of the study and the fact that most of the reports may have been proxy reports would have affected the underreporting. Veterans who have no reason to suspect reproductive problems as a result of their previous military experience are likely to forget more miscarriages of their wives than the Vietnam veterans. Because of these limitations, one cannot be expected to comment responsibly on these findings because they are based on what is clearly a small subset of the total study group other than to say that rates of miscarriage in the general population are in the range of 20 percent to 25 percent of all pregnancies, far higher than the 7.6 percent and 5.5 percent rates found in the American Legion Study for Vietnam and non-Vietnam Veterans, respectively.

Social and behavioral consequences

The general items that were used to assess social and behavioral outcomes (pp. 132–133, and actual questionnaire were reviewed) are very limited. Generally, they represent symptom ratings. Only a few are time linked (within the last 6 months). Although some of these probably would correlate with more standardized and valid psychological instruments, one would expect that their validity would be more limited than the standardized tests due to the limited number of items (even though they have reasonable reliability). The fact that all of the variables are highly intercorrelated suggests that these different scales are not really measuring different factors, but probably are measuring general "psychological distress" (p. 139). This has been a problem for the scale that much of this has been taken from, the Psychiatric Epidemiological Research Interview. These measures do not provide a DSM-III diagnosis sincek the DSM criteria and methods were not used in the study. Given that the symptoms are never time-linked, a subject could have had one symptom this year, another last year, and another 5 years ago and ended up with a high score.

The interpretation of some of the findings are questionable. For example, the authors state that "the correlation is comparatively strong with combat exposure". Given that one is r = 0.18, the other r = 0.30, accounting for less than 2 percent and 9 percent of the predicted variance, these are unimpressive correlations. In Table 5 (p. 141), there is no correlation with combat exposure over 0.30, most are under 0.22. The Agent Orange index correlations are even lower. The mean differences between groups in Table 6 (p. 141) are also of limited clinical meaning, although statistically significant given the large sample sizes. It is misleading to suggest that the Vietnam veterans are more psychologically distressed than the non-Vietnam veterans, since these score differences are minimal (1 point generally out of 20 possible). The graphs on page 142 (Fig. 6) seem distorted given that the correlations are all less than 0.30.

It is of concern that the authors never look at the relationship between well recognized risk factors for psychological symptoms such as drinking and smoking and any of the psychological data. Instead, they con-

clude that the psychological problems are caused by the Vietnam experience, as are the drinking and drug problems when it is known that the psychological and drinking problems are highly interrelated and may account for more of the current findings than anything else.

Post traumatic stress syndrome (PTSD)

The main concern is the diagnosis of PTSD. First, the multiple approach to combat exposure classification is crucial. The authors assume that any subject who had a high combat exposure score had exposure to a traumatic event, as required by the PTSD criteria. This is not always accurate, as people working on transportation details may have seen many dead bodies, but never have been in life-threatening situations or had been traumatized. PTSD rates depend on the combat exposure index, which of course is correlated with PTSD symptoms. There is circularity to this approach to this disorder's definition. The authors use a symptom checklist without time frame (viz., date of discharge from service); no DSM-III diagnosis is made without a timeframe for symptom co-occurrence. In addition, the authors fail to diagnose other disorders whose symptoms may be similar, if not identical (anxiety disorders, depression, substance abuse, etc.). Therefore, there is no way to identify just those veterans who had PTSD, when they had it, or what else they may also had. Other traumatic events in the veterans lives are ignored, and it is not clear what "often" and similar words may have meant to a particular veteran. In short, this approach cannot provide a DSM-III PTSD diagnosis. At best, it provides a group of symptom ratings (p. 182) over a number of years (different for different veterans).

On page 183, the investigators use mean values of PTSD symptoms. This is not meaningful when one recognizes that one veteran may score 4-5 points on 5 symptoms over a 15-year period and get a score of 20, while another veteran may score rarely (2 points) on 10 symptoms over the past month and also get a score of 20. These men are not likely to have psychological problems. One is more concerned with the second rather than the first in some instances; yet, the authors treat both of these men as identical in their analyses.

FOOTNOTES

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DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
November 28, 1988.

From: Chief, Agent Orange Projects, OD, CEHIC, (F16).

Subject: Comments on the Vietnam Experience Studies of Stellman, et al.

To: Stephen B. Thacker, M.D., M.Sc., Assistant Director Science, CEHIC, (F29).

These papers are a bit sloppy (data reported in one part are not consistent with that reported in another), but they probably do report accurately the results of the survey. The authors do not report well the potential sources of bias. They overgeneralize their conclusions and in some cases draw conclusions opposite to those I would draw about the generalizability of their results. They also provide little detail on the way their sample was drawn. In addition, they ignore other research of which they are certainly aware (AOVS in particular).

It is not possible to pronounce on the details of their sample selection scheme, because the details are not given. They have subsampled members of the American Legion (AL) in 6 states. Although they state that the AL has 700,000 era veterans, "a meaningful percentage of those approx. 3-4 million men who served in the military during that era" (p. 113), they also state that 9 million men served in the era (p. 112) of whom 3-4.4 served in SE Asia. These statements are inconsistent. I believe the membership is 700,000 out of 9 million, or about 8 percent of era veterans. They note that membership is mostly white. They state that AL members are more stable than nonmembers who are veterans and that therefore, physical and mental health problems would be worse in a larger sample. This is opinion. It could also be argued that AL members are less comfortable in the general social atmosphere and therefore join groups of old military vets because they have more scars from their past service and more trouble adjusting to the world at large.

It is not clear how they subsampled the veterans. Unfortunately, they give some information on further sampling procedures, but no numbers to determine how many people dropped out at each stage. They eliminated a percentage of non era veterans if they returned a postcard indicating whether they were era or non era, but do not say how many did or did not complete this step. They then sent the remainder of the names to individual posts of the AL to have post secretaries decide who was or wasn't an era veteran. Members of the AL, termed volunteer researchers, were then given lists of about 200 names, including those known to be era veterans plus those not known to be either era or non era by either of the above two steps (return of postcard or knowledge of post secretary). This selection technique looks OK so far (save that they're all AL members), except for the absence of numbers on how many fell into each group. The volunteer researchers were trained by Stellman and Stellman to identify 15 who served in SE Asia and 15 who did not from their list of 200. This is where I begin to get worried about the sample design.

Surely the volunteer researchers knew the study was to look at the health effects of Vietnam service and AO exposure. They may have volunteered because they had media generated opinions on the outcome of the study. If they only had to identify a total of 30 people out of a list of 200 (not all of whom where actually era veterans), they would most likely have stopped their effort when they got to 15 in each group. Perhaps they contacted first those people they were personally acquainted with. Perhaps a higher percentage of these had preformed opinions of the health effects of the Vietnam war.

It appears, however, from statements elsewhere in the papers that there was more to the sampling procedure than this. They say they oversampled Vietnam veterans (taking 15 of each would indeed be slight oversampling of Vietnam veterans), yet their final sample is 42 percent Vietnam and 58 percent non-Vietnam. This is precisely what you would expect without oversampling (and not what you'd get from 15 of each). The first paragraph of the first paper says that 32 to 48 percent of era veterans served in SE Asia. They also say nothing about differential response rates between two groups. In our study, the Vietnam group was more likely to travel to Abq. than the comparison group. If this research team also had a higher response rate among VN vets, it is even less clear how they did their sampling.

Report #1, the 1985 report on the same studies produced as an American Legion document, raises additional questions on the sampling. It appears to be reporting on the exact same study, but describes it differently. We are here given the information that 50,000 postcards were returned indicating war era. However, this earlier report says the 770 research volunteers were given the names of only those Legionnaires who did not return postcards. They were still said to be given 200 names each.

This 1985 report also says that 12,588 men were identified as "Vietnam veterans" and mailed questionnaires. The 1988 report says that 2858 subjects who served in SE Asia returned questionnaires. This is not consistent with the response rate reported as between 52 percent and 64 percent for both cohorts combined (SE Asia and other).

They do report on different response rates by state. On p. 124 they give it as ranging from 52.5 percent in PA to 64.1 percent in MN. (This is apparently inflated some-

what—bad addresses are removed before calculating the rate.) On p. 179 it's 58.1 percent in PA to 64.6 percent in MN. Table 4, p. 125 also shows more total respondents from MN than from PA. PA has three times the pop. of MN. Either they weighted the sample by state or Minnesotans are far more likely to join the AL.

The rest of the report also discusses only VN versus other. They never again use the category SE Asia, so I can't tell which they were actually looking at. They also never again mention branch of service (after p. 122). This seems a serious omission.

What they have so far is a sample with a high degree of self selection and an obviously high potential for bias on exactly the outcomes of interest.

The first sentence of the discussion of p. 123 indicates the bias on the part of the authors: "The data presented here once again confirm the massive use of herbicidal agents in Vietnam." The data presented have nothing to do with that issue. All they have done is describe their sample selection and given some hints about their AO exposure scale and their combat scale. All herbicide use data is borrowed from documents published long ago.

THE AO EXPOSURE CLASSIFICATION SYSTEM

This system is described to some extent in the 1986 publication. It relied on the vet sending back a map of VN with 98 places at which he could indicate his dates of service. They say they got adequate info back from 70% to calculate a score, but they don't define what constitutes adequate. That's a lot of recall unless most individuals spent their entire tour in one location. We know from our study of army ground troops, that many moved frequently. Possibly their data is least adequate for those army and marine veterans who moved the most (and might be the most interesting group to study). It would be most adequate for those who parked in one spot for the war. They give no info on this. They do say that the entire q'aire took 45-60 min. to complete, including health status and feelings about the VA, so they didn't take too long on the map portion. Their scoring system has both a proximity and a time component. What it probably serves as is a measure of where they served in VN, which may be a surrogate for occupational specialty and branch of service. The AOVS would indicate that it probably has nothing to do with AO exposure. The authors take the extreme position of standing logic on its head (p. 127) and describe their system as the gold standard, while referring to others as "yet to be validated exposure methods such as analysis of dioxin residues in tissue collected some 15 years postexposure".

THE COMBAT INDEX

On p. 179, you find their combat exposure index in Table 1. There's nothing inherently wrong with it except that it's very subjective. The difference between seeing someone killed rarely (score 2) or very often (score 5) is in the eyes of the beholder. Their recall of these events and classification of them between rarely and very often may be highly biased by their subsequent feelings about the war, physical health, and mental health. It would almost certainly be linked to their answers to the PTSD questions. Which came first would be a hopelessly muddled question.

Some of their conclusions based on these indices are open to question. Higher combat score correlates with lower income. They conclude (p. 135) that "significant family income loss has occurred among VN combat veterans". Well, maybe, but then maybe those with lower income for whatever reason are more likely to score something as very often rather than rarely, sometimes, or often. They also find higher separation and divorce rates among the high combat group. Same possibly circular logic. They also say that divorce rates were 4 times as high in the high combat group as in the non VN group. How 60.4 percent is four times 28.4 percent (p. 136) is something I do not understand.

They also attempt to look at their AO index and combat index as separate variables. They do find they are correlated, and that usually the AO index drops out in multivariate analysis. This is not a surprise. The combat index probably measures very closely the same thing as the sexual satisfaction, skin rash index, whereas the AO exposure index more closely measures branch of service, type of unit, and location in VN.

They also find some correlation with both indices and various self reports of physical and reproductive health problems. These are also not a surprise. They are not at all out of line with what we found in the VES (without an AO exposure index) in terms of either symptoms mentioned or odds ratios. However, we found these results on the interview component only. They were almost never substantiated by the physical and laboratory exam. The synthesis chapter of the VES monograph (Chapter 14) discusses our findings in this regard. Symptoms of four health problems correlated well with self reported herbicide exposure (mapping index was not used), but signs of the same four problems did not (p. 13). The same was true of the correlation with self reported combat exposure (p. 15-16).

SUMMARY

The combat index probably has something to do with combat. It is shown to be highly correlated with branch of service. It would be nice to see their results within Army only. However, combat index is subjective enough that this subjectivity alone could easily explain the entire correlation with physical and mental health and social outcomes.

The AO exposure index would be more interesting if we hadn't already published the AOVS. I agree that the individual could not have deliberately scored himself high for AO exposure. However, their index is serving as a surrogate for something else that related to their Vietnam service, not their exposure to Agent Orange. This something else is in return related to their reported health outcomes, although not particularly independently of their combat index. Again, it's probably a branch of service and occupational specialty index with a definite correlation to combat of its own.

Because there is no attempt to verify any of the questionnaire responses, you're basically back at square 1. The results of the VES fairly convincingly found that VN vets report more adverse health outcomes than comparison vets, but that these are not substantiated by physical or laboratory exam.

All of this, coupled with their sampling of a self selected group means that this study adds nothing to our knowledge of this issue. This is the type of research that launched the concerns about Vietnam service and Agent Orange exposure. It is many years out of synch with current efforts.

EDWARD A. BRANN.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
December 16, 1988.

From: Senior Statistician, AIDS Program.

Subject: Comments on the manuscripts by Stellman, Stellman, et al. on health of Vietnam veterans published in Environmental Research, December 1988.

To: Stephen M. Thacker, M.D., Assistant Director for Science, Center for Environmental Health and Injury Control.

I read carefully the first paper and the Stellmans' previous paper on estimating exposure. I was particularly interested in this part of this material because I had responsibility for overall coordination of the CDC Agent Orange Validation Study (AOVS), did a substantial part of the work on estimating herbicide exposure for the veterans in that study, and had the main role in writing the report and manuscript describing the AOVS results.

COMMENTS ON ESTIMATING EXPOSURE

Many studies of tissue TCDD levels have shown that Vietnam veterans whose main job was not handling herbicides have levels similar to unexposed civilians of the same age. In addition, the AOVS showed that there is no relation between current TCDD levels and relative opportunity for exposure according to a wide variety of scores derived from the military records or from self-reported exposure. Thus, there is no evidence that typical troops who served in South Vietnam had meaningful exposure to TCDD.

Analyses of herbicide spray and military unit location records show that units were seldom within 2 km of a Ranch Hand spray within a week after the spray (unpublished analysis done for the AOVS). Thus the greatest potential for exposure to herbicides shortly after spraying was likely to result from sprays around base camps. The Agent Orange Advisory Committee recognized that the records are seriously incomplete for these sprays (General Murray report).

As Lilienfeld recently stated, "It is the assessment of exposure that is the cornerstone of any environmental epidemiologic study" (D.E. Lilienfeld, Changing research methods in environmental epidemiology, Statistical Science 1988, 3: 275-280). Thus, the validity of the findings in this series of papers depends on the accuracy with which exposure was assessed in this study. I reviewed carefully the original paper describing the exposure estimation procedure (SD Stellman & JM Stellman, Estimation of exposure to Agent Orange and other defoliants among American troops in Vietnam: a methodological approach, Amer J. Industrial Med 1986, 9: 305-321) as well as the summary of exposure estimates for the men in this study. Especially in light of the findings in other publications, the authors of these studies must show that they have overcome the recognized difficulties and obtained valid exposure measures. I believe that their measures may be unreliable for the following reasons:

1. The authors' estimates are based completely on Vietnam veterans' recollection of their locations and dates of service, without any apparent validation from military records.

2. The authors' procedure greatly overestimates the relative exposure of veterans who were more than 1-2 km from known herbicide sprays.

3. The authors' procedure implicitly assumes that the only exposure of concern was from contaminated soil and perhaps

water, which may result in a substantial overestimate of exposure for those who actually were within 2 km of a documented spray.

The following are detailed comments on these issues.

1. Both published manuscripts report that exposure was estimated by asking veterans the dates they had served at about 100 locations in South Vietnam. The authors appear to believe that the provision of sufficient data to calculate an exposure measure is evidence that the data are reliable (1986, 311-315; 1988, 116 and 119-120). Because of the long half-life the authors used, their exposure measures probably do not depend very much on accurate date information. However, it would seem essential to verify veterans' recollection of where they served by validating a sample of questionnaires with military records. Such records were used in the Agent Orange Validation Study (AOVS); they are the dates during which a veteran served in various units (from his military record), and the locations of those units on those dates (abstracted from military records by the ESG).

2. The exposure measure allows for substantial exposure up to 15 km from a spray (1988, p. 116), with exposure decreasing as the inverse of the distance from the spray. Simulated Ranch Hand sprays at Eglin AFB, Florida, showed exposure decreasing far more rapidly (as a negative exponential), with negligible exposure more than 1-2 km from the center of the spray path (the AOVS report contains a reference to the U.S. Air Force study containing these data). It seems reasonable to believe that most perimeter sprays had no more dispersion than did Ranch Hand sprays, since most of the perimeter sprays would have been from ground level or low altitude. In contrast to this new report, the AOVS used only locations within 2 km of a spray to estimate exposure, a procedure that is in much better agreement with the available data.

In addition, some base camps in South Vietnam were quite large, so that perimeter spraying would not necessarily result in significant exposure for all veterans stationed at that camp. While no details are given, it is possible that each base camp is represented as a point in computing potential exposure in this report. In their 1986 report, the authors show that, for 6 base camps, there are far more herbicide spray "hits" 5-15 km from these base camps than within 5 km (1986, p. 311, Table II). Note also that use only of sprays within 5 km changes the ranking of these base camps with respect to their relative opportunity for exposure.

These considerations suggest that the authors may have substantially overestimated herbicide exposure for many veterans, in contrast to their statement (1986, p. 317) that "Computed exposures will thus tend to underestimate true exposures" and that the exposure scores do not rank relative opportunity for exposure correctly.

3. The exposure measure used here assumes a half-life of 1 year for the decay of TCDD in the environment (1988, p. 116). This is roughly consistent with the experimental data on the half-life of TCDD adsorbed to soil and similar to the half-life of 5 years used to compute the "slow" or E_5 score in the AOVS. However, this half-life is about two orders of magnitude longer than the estimated half-life of several days for TCDD on vegetation. The Stellman exposure measure, therefore, assumes that the significant source of exposure is soil and gives an estimated exposure far greater than that which would be obtained if the important source was TCDD on vegetation. In fact, the relative importance of vegetation vs. soil is unknown.

OTHER COMMENTS

These reports do not seem to contain much of the basic information necessary to evaluate the results of an epidemiologic study, including:

Why were the 6 particular states chosen?

What were veterans told about the purpose of the study?

What were response rates in Vietnam vs. non-Vietnam vets?

During what dates was the study conducted?

What power calculations were done leading to the choice of the sample size; what was the achieved power for various prevalences? (The only statement about power I found is in paper 1, p. 115, last sentence before "Characterization of Herbicide Exposure.") Is power for herbicide exposure better than the Air Force Ranch Hand Study, where we have clearly exposed and unexposed groups?

The dates the study was conducted and what vets were told do matter. Contrary to the statement in paper 1, p. 123, para. 2 of Discussion, vets could have given response leading to higher exposure scores. A book of maps showing locations of known herbicide sprays was published in California (I don't know date of publication). Thus it could matter whether questionnaires were completed before these maps were published.

REPRESENTATIVENESS AND BIAS

Are Legion members representative of all vets? Are members in these 6 states representative of Legion members? Are those responding respresentative of Legion members in those states? There is reason to doubt representativeness:

A. In the AOVS, interviewed veterans who believed they had health problems or were exposed to herbicides were clearly more likely to go to Lovelace Medical Foundation for the medical exam than those who believed they were in good health or had little exposure to herbicides (see Table 2 in the JAMA article). It is plausible that the same bias would occur in those willing to spend time filling out a long questionnaire.

b. There is some possibility that bias could be introduced by the use of volunteers to determine service location and establish contact. These volunteers might have worked harder to get a Vietnam vet with perceived or actual health problems to participate than a similar vet in good health. There was concern about this type of recruitment bias in the original American Cancer Society study of smoking and health (possible reference: TD Sterling, A critical reassessment of the evidence bearing on smoking as the cause of lung cancer. Amer J Pub Health 1975, 65; 939-953).

The relatively low participation rate gives ample room for bias and a non-representative sample. There is very little analysis of potential bias, and I did not find the analysis of representativeness convincing.

JOHN M. KARON, Ph.D.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
December 5, 1988.

From: Pierre Decoufle, Sc.D., Epidemiologist, Developmental Disabilities Branch (F-37).

Subject: Review of papers by Stellman & Stellman on health of Vietnam veterans published in December, 1988 issue of Environmental Research.

To: Stephen B. Thacker, M.D., Assistant Director for Science, Center for Environmental Health and Injury Control (F-29).

General Comments:

1. Representatives of the population from which the study group was selected—Are members of the American Legion representatives of any larger population of Vietnam veterans, let alone all Vietnam veterans?

There are no data given in the papers that address this issue, except the statement that the approximately 700,000 Vietnam era veterans in the American Legion constitute a "meaningful" percentage of the approximately 3 to 4 million men who served in the military during that era.

2. S lection of study sample: It is difficult to judge the adequacy (validity) of the final respondent sample because several key numbers were not given. These are as follows:

The number of men comprising the one-seventh random sample of members with less than 20 years of continuous membership;

The number of Vietnam era veterans in the one-seventh random sample;

The number of veterans in the one-seventh random sample that could *not* be classified as to era;

The numbers of Vietnam and non-Vietnam veterans to which questionnaires were sent.

With these numbers, one can compute the magnitude of losses and response rates and, thus, assess the adequacy of the final respondent sample.

3. Representativeness of final respondent group: The authors could at least have compared selected demographic and socioeconomic characteristics of their respondents with those of other groups of Vietnam era veterans so that one could assess the adequacy of their study group. The authors do state that their group is 98.5% white, for example, which is very different from the racial composition of every other group of Vietnam era veterans that has been studied.

4. Relationships between combat exposure and outcomes and herbicide exposure and outcomes: There are at least two important points about these exposure-response analyses that the authors do not address. One is the possibility that the three combat exposure groups and the three herbicide exposure groups differ appreciably with respect to other characteristics that are associated with reporting of outcomes. For example, Navy and Air Force veterans make up about 49 percent of the Low combat exposure group but only 10 percent of the High exposure group (based on data from Table 3 and Figure 5 on p. 122). Although not shown, the military rank profile of these exposure groups could also be quite different. Both branch of service and military rank could be important correlates of outcome reporting and should have been taken into consideration in comparisons among the combat and herbicide exposure groups. Other baseline traits that would be important to take into consideration are military occupational speciality and whether a man was drafted or

volunteered for military service. The second point that should have been addressed is the possibility of response bias or selective reporting of outcomes by Vietnam veterans. Further, it is not possible from a cross-sectional study that relies on self-reported exposure (particularly combat) and self-reported outcomes to establish with certainty whether the exposure led to the outcome or vice versa.

5. Use of a self-administered questionnaire: This mode of data collection has a number of important limitations that could affect the quality of the responses, such as: A respondent can take as little or as much time as he wants to complete the questionnaire;

Absence of a trained interviewer precludes the ability to answer clarifying questions and the ability to encourage completion of all questions;

Respondents can ask family, friends, or other veterans for their opinions and help in filling out the questionnaire.

Specific Comments (keyed to page numbers of journal):

1. P. 112: What is the basis for the statement in the first sentence of the second paragraph?

2. P. 119 (Fig. 2): The graphical display seems to indicate that more Agent White was sprayed than Agent Orange in Vietnam. Why is that?

3. P. 123: Why would herbicide handlers have the highest mean combat score in view of their job distribution in Table 2, p. 121?

4. P. 123: The first sentence of the Discussion Section is meaningless. This study was not needed to confirm that herbicides were used in Vietnam on a large scale.

5. P. 124: The authors do not provide the basis for the statement given in the last sentence of the first full paragraph. Where are the data that support this statement?

6. P. 124: The discussion of the representativeness of the study group misses the point entirely. No amount of internal analyses of respondents will permit an assesssment of whether the group is representative of all Vietnam veterans. The authors never compare the demographic & socioeconomic characteristics of their sample with any other external population to judge representativeness.

7. P. 126 (top): Just because 1 percent of the study group said they joined the American Legion because they needed assistance on a special "problem" does not eliminate "membership selection" as a possible source of bias. These data seem irrelevant to an assessment of bias.

8. P. 126 (middle): Their data do not demonstrate "that sufficient numbers of troops are available and identifiable for epidemiologic study of herbicide effects". This statement is a "leap of faith" from very limited and questionable exposure data. From Fig. 3 on p. 120 it would appear (assuming their herbicide exposure index is measuring exposure) that there might be insufficient numbers of men with high exposure scores.

9. P. 127: In the last paragraph of the article the authors claim that the accuracy and precision of their exposure assessment method "are comparable to, or exceed, those used in many environmental and occupational studies" without giving any basis for this conclusion.

10. P. 148: The authors say that the "internal consistency of the findings also lends credibility to the study". However, nowhere do they present data that support what is really meant by internal consistency, i.e. that a particular association is present in various subgroups of the total study group. By internal consistency, the authors seem to mean that there was a large number of positive exposure-response associations for combat and herbicides. Of course, this is circular reasoning, using the health outcome results to justify the validity of the exposure measures.

11. P. 156 (Table 1): These findings are consistent with the results of the VES telephone interview component. Results for the infrequent conditions should have been tabulated for descriptive purposes and for completeness. Also, all conditions should be shown, not just those that were reported more frequently in the SEA group.

12. P. 158 (Table 2 & 3): There is no discussion of why the herbicide handler group does not show an excess of adult acne (OR-0.99) whereas the High herbicide exposure group does show an excess for this condition (OR-1.45).

13. P. 158 (bottom): There is no discussion of the curious finding that benign fatty tumors is the only condition that is positively associated with both combat and herbicide exposure.

14. P. 162 (Table 6): The authors should have pointed out that the correlations obtained, while statistically significant, are weak.

15. P. 163 (Table 8): Same comment as in 14 above.

PIERRE DECOUFLE.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
December 20, 1988.

From: Chief, Epidemiologic Studies Section, ERSSB, DCDCCI, Center for Chronic Disease Control and Health Promotion, (F11).

Subject: Comments regarding the Vietnam Experience Studies of Stellman et al.

To: Stephen B. Thacker, M.D., M.S., Assistant Director for Science, CEHIC, (F29).

Most of my comments have to do with sample selection, response rates, questionnaire construction, and creation of combat and herbicide indices, as potential biases introduced by these components make interpretation of results difficult.

American Legion Members as the Sampling Frame: This study, funded by the American Legion, was limited to members of this organization. The authors admit that they do not have a 'representative' sample of Vietnam Era veterans, since American Legion members represent the 'solid middle section of white America'. Demographic data on both the total sample and respondents is sketchy, but the authors did indicate that 98 percent of the participants are white. The authors also indicate that participants have been resocialized sufficiently to join the American Legion. The majority view it as a social organization, but information on services available to veterans is also provided. The authors suggest that a study based on this group represents a 'best case' analysis of the potential health and social effects of the War. It is also possible, given some of the issues discussed below, that the biases introduced by the sample selection and information collection procedures could lead to an over-representation of veterans with residual problems that they attribute to Vietnam service.

Sample Selection: The authors chose a cross-sectional sample from American Legion membership roles from six states (CO, OH, MD, PA, IN, and MN) on a specific date. After exclusion of those with 20 or more years of membership, one-seventh of the records were selected at random. Those in the one-seventh sample were sent a postcard to indicate if he was a Vietnam Era veteran, since this information is not included in Legion membership records. Those who did not return the card (an unspecified proportion) were contacted by the Post Adjutant to identify those known to be non-Era veterans. Vietnam Era veterans and those of unknown status were then contacted by 'volunteer researchers' to determine actual service location, and to encourage participation. The authors appear to have adopted this strategy from the American Cancer Society (ACS) where they were once employed. Recruitment of volunteers for assistance may have its place in studies without a strong prior hypothesis known to the volunteers, but in this case, the hypothesis is quite clear to the volunteer researchers, to the American Legion, and to the participants.

Vietnam veterans with health or psychological problems and non-Vietnam veterans without problems could have selected themselves for the study by returning the postcards. Even more disturbing, the volunteer researchers could have selectively influenced participation. The researchers were given "goals" to identify 15 Southeast Asia and 15 non-Southeast Asia veterans for the study. With these expectations, it is easy to presume that a well-meaning volunteer could have chosen the "worst" Vietnam and/or the "best" non-Vietnam veterans. These unorthodox recruitment procedures are not used in large-scale epidemiologic studies except by the ACS, yet the authors do not explain why they used them or why they would not introduce bias in a study of this type. At least some of the service-related information provided by participants could have been verified by obtaining discharge records. Information on at least some veterans, such as place of service, service dates, rank, and discharge status could have been verified from discharge records, yet the authors did not do so. The extent of the potential bias introduced by this sampling scheme cannot be evaluated, because the authors do not provide baseline demographic information on the original sample and the selected population. Even basic information, such as distributions by type of service (Army, Navy, etc.) is not provided.

Questionnaire Construction: The questionnaire is designed so that information on combat, herbicide exposure, symptoms of post-traumatic stress disorder (PTSD), social factors upon return, and helpfullness of the Veterans Administration are collected before the outcome data. Also, the tone of the questions implies that the veterans did have problems upon return. The herbicide section even includes questions on acute symptoms following exposure, thereby reinforcing its potentially harmful effects. Placing the exposure questions before the outcome questions is not standard practise, and the potential for biasing subsequent responses is clear.

Data Collection: Information was obtained by mailed questionnaire. It appears that the authors sent 12,500 questionnaires and received 6,810 (54.5 percent), a low response rate for survey research. With mailed questionnaires, one can never be assured that the intended person has completed the questionnaire or that he has not received undo assistance. With "volunteer researchers" available, the ability to receive this sort of help is enhanced. The authors suggest their sample is not biased because reported herbicide and combat levels by posts with

high response rates compared to those with low response rates, although their outcome data suggest otherwise. Nearly 9 percent more men from high response posts report excellent health than those from low response posts. This suggests that those with the most health or psychological problems could have been recruited first, with low response posts never getting around to recruiting other veterans. It might be difficult for volunteers to selectively recruit veterans by exposure because the scaling procedures are not known, but it would be very easily to consciously or subconsciously select veterans who seem to be in poor health. The usual information on methods, such as the number of mailings conducted and demographic characteristics of responders was not provided. In the VES, we found only one factor that differentially influenced participation rates in the examination component between Vietnam and non-Vietnam veterans. Non-Vietnam veterans with higher education levels were more likely to participate in the examination, presumably because they understood the importance of their participation. With their low response rates, it is quite possible that socio-demographic differences attributed to Vietnam service may be heavily influenced by differential motivational factors for participation.

Herbicide Index: Drew Baughman, John Karon and others are more familiar than I with construction of herbicide indices, but a few points come to mind. Only 72 percent of Vietnam veterans provided sufficient information on location for estimating herbicide exposure. For exposure data, it is not clear why a one-year half-life was chosen, and based on our knowledge, this seems quite long. The authors indicated they counted all sprayings which ever occurred near each location reported by the veteran. From their report, it does not appear that they excluded sprayings that occurred after the veteran had been in the location of interest. For location data, veterans were asked to give dates of services for about 100 locations of major troop activity. It would be difficult to remember specific dates and places nearly 20 years after the fact. The questionnaire listed the names of base camps, villages, etc. (along with a somewhat illegible map of Vietnam), yet most herbicide exposure would have occurred in more remote areas. Veterans would think they were most heavily exposed when walking through defoliated areas, although by that time, the chemical constituents of the herbicide would have decomposed. In contrast, veterans would have been most exposed shortly after spraying and before chemical decomposition when the jungle looked relatively normal. It would not be unusual for veterans to perferentially remember time spent in defoliated areas, and with the one-year half-life built into the model, these men would be considered exposed. For personal exposures, veterans were asked if they had ever handled herbicides. Veterans could have responded positively if they handled many different types of chemicals, which they now presume were herbicides. Most of the chemicals used near base camps, etc. were insecticides, not herbicides. Thus, the index could represent belief in exposure to Agent Orange rather than actual exposure. In good faith, veterans could think they were exposed because they walked through defoliated areas, and because they sprayed or were otherwise exposed to unknown chemicals. The potential for intentional exaggeration of exposure is also clear. This variable should not be discounted because it does not reflect objective exposure. Our studies suggest that belief in exposure rather than objective exposure as measured by blood dioxin levels, is a strong risk factor for many adverse outcomes, and in particular, depression.

Combat Index: The study includes groups other than ground troops, but focuses only on ground troop experience. For instance, fixed wing pilots or medical personnel could have had traumatic combat-related events, that are not described by this index. The index focuses on frequency not intensity. Seeing a dead man on five separate occasions could get more weight than being involved in one large ambush. The combat index has limitations, even if it is confined to ground troop experience. The questions are redundant and their intent is unclear. For instance, shooting one Vietnamese could elicit a response to 5 of the 8 questions. The scoring procedures are not weighted according to the severity of the experience. For instance finding yourself in a situation you thought you would never survive receives equivalent weight as firing your weapon or seeing dead enemy. None of the combat indices, including the one used in the VES, are ideal but since combat is their major exposure of interest, they could have asked a more extensive battery of questions rather than a screening battery.

Psychological Scales: Most scales chosen represent general adjustment and not specific psychiatric diagnoses. The scales are all said to be reliable (e.g. repeatable), but they do not provide documentation of their reliability or any discussion of their validity.

Analytic Strategy: Crude associations are reported in most instances. Joint effects of combat and herbicide exposure were assessed (and hopefully the "non-significant" main effect of herbicide exposure was left in the model with and herbicide-combat cross-product term), but collected data on demographic variables or smoking, drinking and drug use were not included in multivariate models.

In summary, this study is difficult to interpret due to major problems in study design and execution. Of these, problems with sampling, with questionable design, and with low response rates appear to have the most potential for introducing bias that cannot be corrected or otherwise evaluated. The authors have made interpretation of their findings more difficult by not providing standard tables on demographic distributions for the original sample, the participant sample, or the subsample that provided sufficient information for estimation of herbicide exposure. Some of the provided information on service experience could have been cross-checked by reviewing discharge records for at least some veterans. The accompanying editorial implies that evaluating herbicide exposure is not much different than for retrospective studies of exposure to workers where individual exposures are not measured. The analogy is misleading, because for the occupational studies, you know from objective records that the employee was in an area with potential for exposure, and that workers are exposed during operations. In this study, we do not know if veterans were in spray areas at the time of spraying and we do not know if any dose, let alone a measurable dose, was received. Findings from our dioxin study (that were initially surprising to us), should have been addressed in some manner rather than just labeling our conclusions as "nihilistic."

I hope these comments have been useful, and I would be most interested in seeing a copy of your final response.

NANCY STROUP, Ph.D.

DECEMBER 18, 1988.

DR. VERNON HOUK,
Director, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: This is in response to your request for my critique of the recently published American Legion studies of Vietnam veterans. Although they drew their sample in a way that is very different from the explicit and random method used in CDC's Vietnam Experience studies, their mailed questionnaire (subjective) findings are very similar to the telephone interview (subjective) findings reported by DCD. Their failure to consider the objective data available to them from CDC and from the New Jersey group, led them, however, to an unbalanced (too narrow) interpretation of their data.

Methods. In their studies they used a self-reported combat scale analogous to the one used by CDC. Their computation of an herbicide exposure opportunity index was based on the same sets of spray data used by CDC, and their OE3 formula is analogous to the E2 score used by CDC in its dioxin (TCDD) validation study in III Corps area veterans. The main methodologic difference was that in their questionnaire each veteran was given an annotated Vietnam map, with place names and military unit names, and was asked to recall and record his location by month and year. With time limited to month, they were forced to use the assumption of a rather slow TCDD decay curve in their OE3 formula. In its TCDD study CDC used military records to identify the unit and probably location of each veteran for each day, thus allowing the use of both rapid and slow decay models for separate analyses.

Findings. Both sets of studies found that self-reported combat exposure and self-reported or computed herbicide exposure opportunity are correlated, and that combat exposure correlates with subsequent anxiety, depression, post-traumatic stress syndrome, and certain self-destructive behaviors. In other words, we agree that combat tends to leave long-lasting "invisible wounds." Furthermore, both sets of studies found that combat-exposed people (often also believing that they were exposed to herbicides) tend to report more physician visits and more "yes" answers to a wide variety of symptoms and illnesses, including more miscarriages for their wives. Because of its larger budget, CDC was able to seek objective confirmation of some of the subjective data. Upon physical examination and laboratory tests, most of the differences between the Vietnam and non-Vietnam groups disappeared. Further, CDC found low residual TCDD levels (used as a marker of prior herbicide exposure) in the Vietnam veterans, not different from the levels found in the non Vietnam group. Among the Vietnam veterans, there was no correlation between TCDD levels and either self-reported herbicide exposure or exposure opportunity scores calculated several ways.

High residual TCDD levels are being found by CDC's laboratory, however, in Air Force Ranch Hand veterans exposed occupationally, in civilians who are former herbicide production workers, in people with heavy environmental exposures in Missouri, and in people who were heavily exposed to

the fall-out of an explosion in a herbicide factory in Italy. This last group has residual TCDD levels several orders of magnitude higher than the highest level found either in the CDC studies or in Vietnam veterans studied by the New Jersey group, yet chloracne is the only ill-effect seen so far in the Italian group.

Interpretation: The authors of the American Legion studies apparently did not read the studies mentioned above, since they accept their own subjective data at face value, without comment as to alternative explanations for those findings. When one views all of these studies, including those with very costly objective data, there is a clear and consistent alternative set of interpretations which is not at variance with any of the data reported to date by any study group:

(1) Many anxious, depressed combat veterans have psychologic and physical symptoms.

(2) Many of them also were in and around herbicide applications in Vietnam, and they have subsequently been told about dioxin and its "extreme" toxicity.

(3) Many of them, therefore, attribute their current symptoms to past herbicide exposure.

(4) Very, very few of them actually absorbed significant quantities of TCDD (and therefore other harmful herbicide constituents) from the types of casual or non-repetitive exposures they experienced.

Therefore, studies of adverse effects produced by herbicide exposure cannot be efficiently done from general samples of Vietnam veterans. This logical conclusion from the available data is not "nihilistic", as implied in the editorial accompanying the American Legion reports. Such studies can be efficiently done in the small number of people with clearly heavy, repetitive (usually occupational) exposure. Such studies are under way. Preliminary reporters suggest the hypothesis that TCDD is substantially less toxic to man than it is to guinea pigs.

One is left wondering why the authors of the American Legion studies and the author of the accompanying editorial seem to have selectively ignored recent objective data available to them for arriving at a more balanced interpretation of their subjective data.

With best regards,

ROBERT M. WORTH, MD, PHD,
Hawaii Department of Health (formerly Chief Scientist, Agent Orange Studies, CDC).

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
January 5, 1989.

From: Member, Agent Orange Science Panel.

Subject: Review of the American Legion Studies published in *Environmental Research.*

To: Chairman, Agent Orange Science Panel.

In have reviewed the editorial and 4 epidemiological studies regarding Vietnam veteran members of the American Legion published in *Environmental Research*, Volume 47, Number 2, December 1988. I have, however, restricted my comments to portions of the editorial by M. Gochfeld, the 2 articles by S. Stellman et al., and 1 article by J. Stellman et al. which relate to herbicide exposure.

Editorial: New Light on the Health of Vietnam Veterans: I found this editorial to be unnecessarily inflammatory in a manner better fit for the newspapers than a scientific journal. Expressions like "in the face of remarkably complacent responses by the Department of Defense and the Veterans Administrations" are inappropriate. Gochfeld argues that broad surrogates of herbicide exposures, such as service in Vietnam, are inappropriate predictors of exposure and that blood dioxin levels are the best measures of exposure, but seems to dismiss the work performed by the Centers for Disease Control which did perform blood dioxin tests on a number of ground troop veterans. This testing was not able to adequately define an exposed group of veterans for evaluation. Despite arguing the importance of having a biological determination of exposure, Gochfeld then tends to endorse the exposure index created by Stellman and Stellman which is an unvalidated predictor of exposure.

Although I find the articles interesting in an exploratory or pilot sense, I would not agree with Gochfeld that they represent "a landmark in veteran health research and occupational epidemiology."

Combat and Herbicide Exposures in Vietnam among a Sample of American Legionnaires: The only conclusion that I can strongly agree with in this paper is that "our analysis demonstrates conclusively that mere presence in Vietnam cannot be used as a proxy for exposure to Agent Orange." This statement is not an original finding, but supports work previously performed by the Centers for Disease Control. This article, and their previous work published in 1986, describe a complicated mathematical index which addresses multiple factors thought to increase the risk of exposure to Agent Orange, such as assignment, occupation, and proximity to spraying.

The authors report that their exposure index to Agent Orange and combat experience were associated. This is not surprising since, I suspect, that the largest number of persons in the jungle where spraying occurred were ground combat troops.

Despite the apparent background work performed by the authors and complexity of the index, no information is provided about their model to make it a better predictor of exposure than others previously created. The Department of Defense, the Veterans Administration, and the Center for Disease Control used the Department of Defense records to create a predictive model. These government agencies, however, attempted to validate their model with biological testing and found that they could not define an exposed group of Vietnam veterans. The Stellmand and Stellman is not validated, and, thus, we do not know if it is predictive of exposure. In some analyses the authors use occupation as evidence of exposure, which may be a more reliable indicator, as was found in the Ranch Hand studies.

Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam: This paper describes the rate of self reported symptoms and diseases among study participants. The study cohort was defined via mailing and contact with American Legion posts. The actual participation rate for the study group was 42 percent for those serving in Southeast Asia and 58 percent for those serving elsewhere. These participation rates are not very high, and the presence, type, and direction of bias generated by the low participation are not predictable. One may be concerned about a potential bias, that participation may have been more likely among persons concerned about the effects of the Vietnam experience or those who believe that their health has been adversely impacted. This, however, cannot be evaluated.

The authors report significant elevations in the reporting of benign fatty tumors, adult acne, skin rash with blisters, and increased sensitivity of eyes to light. This corresponds to the elevated reporting of multiple health conditions among the Vietnam Veterans among the Centers for Disease Control Vietnam Experience Study (JAMA, May 13, 1988—Vol. 259, No. 18). In the Centers for Disease Control Study all veterans interviewed and those veterans eventually examined reported multiple health problems, many similar to those found by Stellman et. al., including chloracne and other skin conditions. These conditions, however, were not confirmed upon dermatological examination. One must be concerned that over-reporting may be responsible for the Stellman et. al. findings, but transient adverse health effect that have resolved cannot be discounted. The herbicide handlers did not have large number of significantly elevated adverse health conditions, but did report more skin rash with blisters and change in skin color.

Stellman et. al. also report a significant increase in reported spontaneous abortions among wives of Vietnam veterans. I could not determine if the information about spontaneous abortions was provided by the veteran or his wife. Previous studies report that men are poor sources of information about their wives maternity/gynecological medical history.

Social and Behavioral Consequences of the Vietnam Experience among American Legionnaires: This paper only describes herbicide exposure to be interaction terms in the relationship between combat and adverse social and behavioral outcomes.

Conclusions: I find this series of papers to be interesting as pilot studies and they would be informative if many more definitive studies had not already been performed. Validation of the exposure index would strenthen the results of this data. If the exposure index truly predicts exposure, as defined by dioxin blood testing, we could be more certain that the truly exposed veterans had been studied. Without this information the study of presumed exposed persons for non-validated self-reported health problems should only be considered as exploratory rather than definitive.

JEFFREY A. LYBARGER, M.D.

DECEMBER 26, 1988.

To: Tony Fowler.

From: Robin Morris, Ph.D.

Re: Comments on *Environmental Research* articles on American Legion Study.

Report No. 1, May 29, 1985: I am surprised that the hypotheses (pgs. 1 & 2) are stated in such a way. These are not "null" hypotheses and clearly set a psychological set for all participants in the study. I am particularly concerned with the use of Legion "research volunteers" making contact and discussing the study with potential participants. Even if the participants read the original hypotheses, this would bias their views of the study, and effect their responses since participants are prone to support the researchers hypotheses if they know them (I think this is called the Rosenthal Effect in psychology, but can remember for sure, there has been lots of research on this problem). Even though they state that they "volunteers" were trained "in the proper manner of contacting members" (pg. 4), there is no reported methodology to

monitor them to ensure it. Given the nature and multiple purposes of the study, I consider this a real limitation before any questions are even asked.

The general classificatory data they have is also of concern. They classify persons as "In-Country" or not. There is no discrimination on how long they were "In-Country", and no controls for this factor in any of the analyses in this report. A related problem is their use of birth year for analyses, not year of service in Vietnam. As we know from VES, the age of the vet at time of service, and the actual year in which that service occurred was an important factor in all of our analyses. They confound both of these issues in their design.

Their combat exposure scale is very similar to the one use in VES. Their summing of scores, and breakdown into low, moderate, or high combat exposure is also reasonable given the nature of the scale and its use in the past. It is still important to note that this is a self-report scale regarding combat exposure, and although reliable (pg. 6), there is no validation of its accuracy. The authors continue to report this data as if it is reality, when all other types of factors, including current psychological functioning may affect one's report on it. In other words, there may be correlations between it and other measures of psychological health, but this does not mean that combat exposure caused the psychological health, only that people who rate themselves high on combat exposure also rate themselves high on depression items, and vice versa. There are numerous studies showing that persons who are depressed, etc. have at tendency to answer all (even unrelated) scales in a more negative manner. This point needs to be kept in mind throughout all of the papers, as the authors clearly overstate the meaning of the findings and don't consider other interpretations which may have equal validity. They have no data to make such directional/causative statements. As you remember, we have similar difficulties in some of the VES analysis.

Another issue which I think shows their tendency to go past their data, is in their statements at the end of page 7 which try to argue that they there is no selection bias among those who join the Legion. Unless they question all those persons who did not join the Legion, and their reasons for not joining can they make the necessary analyses to address such a issue. What would happen if all those veterans who didn't join said that the reason they didn't was because they didn't want to have contact with military related organizations, etc. . . . Then the "military personality" may be alive and socializing with like personalities (which all persons are prone to do) in the Legion. Their logic is very odd throughout all of the study reports. I will not detail all such occurrences, only note my concern and the biases which appear to be involved.

A major analysis concern for all of the data they report is the lack of more sophisticated co-variate analyses. They rarely control for those data which they know are different between groups in analyses which are confounded by such variables. In addition, they have no "entry" data on these vets when they went into the service. As we know from VES, the GT, enlistment status (drafted, etc.), etc. at times accounted for a great deal of the variance among various analysis groups. They seem to have a very limited statistical model to adjust for such possible factors in their analyses. A good example of this issue is the differences between incomes in some of their groups. They do not control for the vets time since discharge, age, marital status (previous divorces?), employment history, etc. Given the big effects of each of these on income, their results are just not very telling from my viewpoint.

I know that the part dealing with the VA is not of specific relevance, but the lack of control for those men who have used the VA ever, in the recent past, etc., is a major problem with their analysis, again there appears to be a very simplistic analysis model which appears to be focused on presenting a specific viewpoint.

Comments on "Social and Behavioral Consequences" paper (pp. 129-149): The general items that were used to assess social and behavioral outcomes (pg. 132-133, and actual questionnaire was reviewed) are very limited. Generally, they represent symptom ratings. Only a few are time linked (within the last 6 months). Although some of these probably would correlate with more standardized and valid psychological instruments, one would expect that their validity would be more limited than the standardized tests due to the limited number of items (even though they have reasonable reliability). Of specific importance in all of these data is the paragraph on pg. 139 (1st under psychological well-being section). The fact that all of the variables are highly intercorrelated suggests that these different scales are not really measuring different factors, but probably are measuring general "psychological distress", or something like that. This has been a problem for the scale that much of this has been taken from (PERI). It should also be noted that these measures do *not* provide a DSM-III diagnosis, no matter what the authors imply. Given that the symptoms are never time-linked, a subject could have had one symptom this year, another last year, and another 5 years ago and ended up with a high score. Their interpretation of some of the findings (pg. 140, 1st pp) still leave a lot to be desired. As an example, they state that "The correlation is comparatively strong with combat exposure"—compared to what I have to ask, given one is r.=.18, the other r.=.30, accounting for less than 2 percent and 9 percent of the predicted variance! These are not correlations that I would be excited about, and many psychological journals wouldn't necessarily let you publish such a statement about them. Notice that in Table 5 (pg. 141), there is not a correlation over the .30, most are under .22, with combat exposure, and the agent orange index correlations are even lower. The mean differences between groups in Table 6 (pg. 141) are also of limited clinical meaningfulness, although clearly statistically significant given the large sample sizes. I feel that such data is misleading suggesting that the Vietnam vets are more psychologically distressed than the non-Vietnam vets, these score differences are minimal (1 point generally out of 20 possible). I also don't understand how the graphs on page 142 (Fig. 6) can possibly represent their data, given that the correlations are all less than .30 between these data. I think this is graphic "manipulation" of the actual relationships between this data. Do those look like such low correlations to you?

I also have great trouble in that they never look at the relationship between drinking, smoking, etc. and any of the psychological data. We all know that these interact with each other, but they do not use them for any comparisons. Again, they come to the conclusion that the psychological problems are caused by Vietnam, as are the drinking problems, etc., when we know that the psychological and drinking problems are highly interrelated, and may account for more of the current findings than anything else.

Comments on PTSD paper (pp. 165-192): Again, the main issue here is how they diagnosed PTSD. First, their multiple approach to combat exposure classification is a major factor for their findings. Their basic assumption is that any subject who had a high combat exposure score had to have had exposure to a traumatic event, as required by the PTSD criteria. This is not always accurate, as people working on transportation details may have seen lots of dead bodies, but never have been in life-threatening situations, or traumatized. Anyway, as can be seen by their data, PTSD rates all depend on how you cut the combat exposure index, which of course is correlated with PTSD symptoms, etc. Again, there is some circularity to this approach to this disorder's definition. Their approach is again generally using a symptom checklist without timeframe (since your d/c from service!). No DSM-III diagnosis is made without a timeframe for symptom co-occurrence, as has been discussed before. In addition, they diagnose no other disorders whose symptoms may be similar, if not identical (anxiety disorders, depression, substance abuse, etc.). Therefore, there is no way to identify just those vets who had PTSD, when they had it, or what else they may have also had. They also don't address other traumatic events in their lives (1% maybe had them), nor what "often" etc. may have meant to a particular vet. I do not consider this approach to provide a DSM-III PTSD diagnosis. The best it does is provide a group of symptom ratings (pg. 182) over a number of years (different for different vets of course). Yes there may be something in the data of interest, but I don't see how you can get it.

On page 183, they take the mean values of these PTSD symptoms. This is not very meaningful when you figure that one vet may score 4-5 points on 5 symptoms over a 15 year period and get a score of 20, while another vet may score rarely (2 points) on 10 symptoms over the past month and also get a score of 20. Are these men the same? I would be more concerned with the second rather than the 1st in some instances. They treat them in their analyses as identical.

As you can see, I'm not highly impressed with the psychological methodology, the analysis sophistication, nor the interpretation of the data presented. After the VES, all of these issues are too important and if you don't collect good data, there is just not much you can say about the findings.

If there are any questions for me, I'll be back to Atlanta on Jan. 2 (afternoon).

DECEMBER 20, 1988.

From: Medical Epidemiologist, Behavioral Epidemiology and Evaluation Branch, Division of Chronic Disease Control and Community Intervention, CCDPHP.

Subject: Comments on the Study by Stellman et al.

To: Stephen B. Thacker, M.D., Assistant Director for Science, CEHIC.

GENERAL COMMENTS

This is a cross-sectional study based on self-reported information. The results are very similar to the interview results from VES (Vietnam Experience Study)—almost all outcomes are reported more often by

Vietnam veterans than by other veterans, and, among Vietnam veterans, those who report handling herbicides or more combat experience reported higher rates of most outcomes. As with VES, it is possible that these higher self-reported frequencies are, in part, due to recall bias. One difference between this study and VES is the use of a herbicide exposure index based on the HERBS tapes and the veteran's report of his specific locations of service in Vietnam. This index also predicts self-reported outcomes among Vietnam veterans.

To evaluate the Stellman herbicide exposure index, we could ask Agent Orange Validation Study participants to complete the Stellman Vietnam location instrument. We could then compute exposure scores per Stellman and compare these scores to previously measured serum dioxin levels. We could similarly compute these scores for VES examination participants and see whether there is an association between this index and certain objective measures which correspond to the self-reported findings from the Stellman study (i.e.—"fatty skin tumors", evidence of acne, etc.).

SPECIFIC COMMENTS

Methods:

(1) The study population is not representative of the total Vietnam-era veteran population as it includes only American Legion members and is 98.5% white. This unrepresentativeness restricts generalization of the results.

(2) Because they did not restrict their population to men who served a single term of enlistment and because most career servicemen during the Vietnam-era served at least one term in Vitenam, the Vietnam group is likely to include a higher percentage of career servicemen than the comparison group. This limits comparability between the groups.

(3) The method of recruitment allows self-selection of study participants.

(4) The overall response rate was low (53-64 percent), increasing the possibility of selection bias. Neither the exact overall response rate nor the response by POS is specified. They attempt to address non-response by comparing responses from a "high" response state (Minnesota) and a low response state (Pennsylvania), but this is not helpful as it fails to address differences between non-respondents and respondents. Besides, the response was poor from all six states (64 percent or less).

(5) They have no objective measure of dioxin exposure with which to validate their exposure index. Furthermore, I question the ability of a person to recall exact time and place of service in Vietnam 20 years after the fact.

(6) Their five symptom scales are statistically derived rather than clinically based. It is unclear whether they are biologically plausible.

Results:

(1) The results are nonspecific as the odds ratio is increased for almost all outcomes.

(2) Our troops in Vietnam experienced higher incidence rates of venereal diseases and viral hepatitis than troops who served elsewhere during that era (see Ognibene AJ, Barrett O Jr, eds. General medicine and infectious diseases (vol. II): Internal medicine in Vietnam. Washington, D.C.: United States Army, Office of the Surgeon General and Center of Military History, 1982:233-256 and 419-442). The higher rates of these conditions reported by Vietnam veterans in this study probably reflect events which occurred while the veteran was still in the service.

THOMAS R. O'BRIEN, M.D., M.P.H.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
December 21, 1988.

From: Director, NCHS.

Subject: Review of American Legion Study of CEHIC.

To: Dr. Vernon Houk, Director, CEHIC.

I understand that on December 6 you asked NCHS to review the American Legion-Columbia University Vietnam Veterans Study for study design, sampling, response rates, and analytic methods that the authors used to cope with flaws. The following are some issues raised by the information sent for us to review. We only reviewed the findings regarding "Health and Reproductive Outcomes."

The American Legion study was a retrospective study of a well-publicized suspected toxic exposure experienced by men one to two decades ago. That is, the potential participants of the study were not "blinded" to the hypotheses. As such, there are many aspects that make it difficult to ever do such a study and get reliable, meaningful results. The investigators provided the reader with minimal information relevant to these issues and did not give adequate discussion regarding the interpretation of the findings.

SUBJECT RECRUITMENT

The subjects were recruited from the American Legion rolls in six States. There was an attempt to determine all veterans on these rolls that were in the services during the Vietnam era. The number was not explicitly stated, but it appears to be 12,588 (Report #1, p. 3). There was a 54 percent response rate to a mailed questionnaire. However, the investigators provided no information regarding the nonresponders. Hence, it was not stated whether there was a different response rate among veterans who served in Southeast Asia or who suspected that they had been sprayed with Agent Orange as compared to other veterans.

QUESTIONNAIRE

Many variables requested time in month and year. Given that the period of recall was as long as 20 years, the data from these questions were probably unreliable. Hence, the careful analysis that combined this information with the records of herbicide spraying were also likely to be unreliable.

The questions regarding skin conditions were stated in terms of "ever experienced" these conditions. The article implies, however, that the conditions were current.

ANALYSES

The criteria for "high," "medium," and "low" exposure classifications were not given. However, from the frequency distribution (EHR, p. 120) and numbers in the tables (EHR, 158-159) it appears that "high" included anyone with an exposure level at or above the mean, i.e. 0.36-1.60. That means that, with the unreliability of the question responses, there was probably little difference between the "medium" (.10-.36) and "low" (0.0-.10) groups.

Combat and herbicide exposure were confounded. There were inconsistencies regarding the number of veterans in various combat classifications. On EHR p. 119 it was stated that 2087 Southeast Asia veterans had combat scores. However, on EHR p. 160 the total number of Southeast Asia veterans with combat scores was 2845 . . . a number which apparently did not include herbicide handlers. This is unlikely since the total number of Southeast Asia veterans who were not herbicide handlers was only 2858-102—2756!

SELECTED FINDINGS REGARDING "HEALTH AND REPRODUCTIVE OUTCOMES"

Because the combat and herbicide exposures were confounded, it is hard to determine a primary cause (combat vs herbicide exposure) even if one regression coefficient may appear to be larger than another. Because of the resulting multicollinearity, the standard errors on the coefficients (not given) would be quite large. Although the resulting coefficients may be significantly different from zero, they are unlikely to be significantly different from each other. Therefore, their relative "importance" would be difficult to assess. Further, because of the instability of these estimates, these kinds of regressions often change radically of these estimates, these kinds of regressions often change radically when more subjects are added to the analyses.

The finding regarding the percentage of spouses' pregnancies that resulted in miscarriages is suspect. The miscarriage rate of pregnancies to women in the general population is 20-25 percent. However, this study only reported 7.6 percent for Vietnam veterans and 5.5 percent for others. Clearly, there was a great deal of underreporting. Both the retrospective nature of the study and the fact that most of the reports may have been by proxy reports would have affected the underreporting. Veterans who have no reason to suspect reproductive problems as a result of their previous military experience are likely to forget more miscarriages of their wives than the Vietnam veterans. Therefore, these data provide no evidence that the miscarriage rates have been different for wives of these study subjects.

The health symptom complex is based on symptoms severe enough for the veteran to seek medical attention one or more years following discharge. This means that veterans who may have sought attention while in the military as long as several years after serving in Vietnam would not be included. On the other hand, because of the recent, heavy publicity regarding Agent Orange exposure and these symptoms, veterans of Southeast Asia would have been more likely to seek medical attention regarding these health symptoms. Therefore, with regard to these symptoms, there may have been bias in terms of which group of men would have actually sought medical attention.

SUMMARY

There are several aspects of retrospective studies in general, and this study in particular, that make the interpretation of these results difficult. None of the above findings, and others, were discussed in light of the likely recall bias of this study population. Some of the numbers of subjects included in analyses are inconsistent and no information is given regarding the nonresponders. The authors do conduct largely within group comparisons, however, they are not critical of the effect of strong confounding of the variables of most interest.

MANNING FEINLEIB, M.D., Dr. P.H.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
December 20, 1988.

From: Epidemiologist, Birth Defects and Genetic Diseases Branch, BDDD (F-37).
Subject: Review of Stellman & Stellman Vietnam Veteran Study.
To: Stephen B. Thacker, M.D., Assistant Director for Science, CEHIC (F-29).

EXPLANATION OF STUDY POPULATION

Pg. 114: The definition of the eligible and final study population is inadequate. The reader should be given the following information: the size of the original total population sampled and the ⅓th random sample; the number from this sample who returned postcards, who were ultimately contacted, and who could never be reached in any way and remained status unknown; of those who were contacted, how many participated, how many refused, and how many were lost to follow-up at this stage; as much of the above as possible should be given by cohort status.

From what I've been able to piece together from these papers and an earlier document, it seems that the sample selection is based on an assumption that about 15 percent of all Legionnaires are Vietnam-era veterans (maybe they got this from their pilot study in south Dakota). From an earlier report, we know that 85,000 men were included in the ⅓th random sample from all 6 states, and that 50,000 returned the postcard indicating war era. The remaining 35,000 were supposedly classified by volunteer researchers. 12,588 men were identified as Vietnam-era vets and 6,810 completed questionnaires. None of the "attrition" in the population is broken down by cohort status.

Why were these particular 6 states chosen for study? Some explanation is needed.

POSSIBLE SOURCES OF BIAS

Pg. 124: The authors claim that "representativeness of study subjects is intimately related to their response rates," and then proceed to give us response rates by state instead of by cohort! The total response rate in this study is not good to begin with (54 percent by my calculation) and if it varies significantly by cohort, they could easily have a serious source of bias operating.

They exclude from the denominator of their response rate those questionnaires "returned for bad addresses or otherwise undeliverable." This is very unconventional and will inflate the response rate a little or a lot depending on the number of vets who could not be tracked down. So, the response rates they are presenting are already inflated by some unknown degree.

Pg. 124-125: They conduct a strange comparison of "the distribution of important variables" between men coming from high-response Posts and men from low-response posts in an effort to address the question of representativeness of their sample. Because they did not find differences between these "high-response" and "low-response" subjects for these variables, they conclude that they have little response bias. This is a meaningful analysis only if you make the assumption that respondents from "low-response" posts are more like non-respondents than respondents from "high-response" posts. I know of no reason why this assumption should be true. They say that age was related to response rate; this variable alone could completely explain inter-post differences (i.e. respondents from all posts are similar, but some posts have higher rates of non-response because their membership is older).

Some of the standard things they could have done to address bias and representatives, they did not do. Any information they have available about nonrespondents should be presented to the reader. They mention almost ancedotally that age was related to response rate (pg. 125). Do they know anything else about nonrespondents? Why isn't the age distribution of respondents and nonrespondents compared? Why isn't the cohort (VN+, VN-) distribution of respondents and nonrespondents compared? These are standard, accepted methods of presenting data. The same holds true of cohort comparisons among respondents. The reader should see the age, race, education, income, etc. distributions for VN+ vs. VN- and also for the different combat cohorts since so many comparisons are made by combat status. This is especially important because so many of their presented analyses are essentially crude and do not control for all these important variables.

The authors could also compare their sample of veterans to veterans from other studies if they want to examine representativeness. They say their study group is 98.5 percent white; this obviously is not representative of the general population or of the racial distribution found in other veteran studies. They say that their study group is "representative of the solid 'middle section' of white America, with its relatively high educational and income level and marriage rate" (pg. 147). This statement may be a little misleading. Compared to other veteran studies that include more non-white veterans (CDC's VES Studies and Card's Lives After Vietnam), the Legionnaires appear to have no more education than the CDC veterans and substantially less than Card's veterans. The marriage rate among the Legionnaires may in fact be very nonrepresentative. Using the numbers of "ever-married" veterans given on pg. 136, I calculated the rate of ever married to be about 68 percent in both cohorts. This is extremely low; the rate in the CDC study is about 91 percent and in the Card study about 93 percent. (This very low marriage rate is difficult to evaluate with certainty because different numbers of ever-married vets—restricted to those born after 1940—are given on pg. 163 and are larger than those given on pg. 136—they should be smaller because of the additional year of birth restriction).

MISSING DATA

No mention is ever made of missing data and how it is handled. Since the numbers keep changing throughout the paper, my best guess is that they just ignore this issue in the analyses. Depending on the extent of missing data, this could represent a real bias. For example, the analysis of average weekly consumption of alcohol (pg. 145) is based on 1824 (64 percent) VN+ veterans and 3254 (83 percent) VN- veterans. This represents a substantial amount of missing data in total and a large difference between the two cohorts. The validity of such a comparison is in question. For many outcomes, numbers are not given so no estimate of missing data can be made.

HERBICIDE EXPOSURE

Pg. 116: 73 percent of VN—vets gave enough (self-reported) location data to be classified as to agent orange exposure. Consequently, for all analyses using this variable, at least ¼ of the data are missing.

Pg. 120 and 126: The authors present the correlation between the spraying activities and the military buildup in Vietnam as a finding of their study. This correlation is well documented; no study was necessary to detect it. As we have found, this does not necessarily imply that a great number of men actually incurred a biologically meaningful exposure.

Pg. 120: The distribution of their agent orange exposure index basically shows most vets clustered at the low end with a few scattered out on a long tail. Even if one were to make the assumption that this index (based on Herbs tapes and self-reported location) has any validity, there is still no discussion of what the levels of the index might represent in biological terms. Until and unless some type of method of validation can be applied, the value of any such index is completely unknown. Certainly past study has taught us that, and the authors should at least acknowledge it.

COMBAT

The authors analyze most of their data by level of combat within Vietnam service where combat is defined by self-reports. There are two problems and potential sources of bias with these analyses that the authors do not acknowledge or address. First and most obviously, because it relies only on self-reported data, the combat index may not validity reflect actual combat; we know only that it reflects perceived combat, and the data should be analyzed and interpreted in that light. Second, even if the combat index validly reflects actual combat, the men who saw more combat may have been different going in than the men who saw little or no combat. It makes sense that officers would see less combat than enlisted men and that older men would see less combat than younger men. But, since their data are never controlled for rank and rarely for age, we do not know if these variables might explain differences now attributed to combat. The Louis Harris study, Myths and Realities: A Study of Attitudes Toward Vietnam Era Veterans, found that "among those who served in Vietnam, those with less than high school educations (at induction) were three times as likely to see heavy combat as were those with college educations". They concluded that "combat assignment processes . . . served to mirror the underlying class discrimination of the society itself". If this is the case, then many of the sociodemographic, behavioral, and health differences seen by combat status in the Legionnaires study may be due, in whole or in part, to basic preexisting differences in the men who saw different levels of combat. This issue could have been better addressed by more adequate control for all available covariates in the analyses and through discussion. The general lack of specificity associated with combat (i.e. it is related to almost everything) increases the likelihood of a reporting or selection bias.

REPRODUCTIVE OUTCOMES

Pg. 162: The reproductive findings are confined to ever-married men born in 1940 or later. The restriction on birth year is done in an attempt to "eliminate reproductive experiences that occurred before the Vietnam era". This is a very crude way to accomplish this goal and is subject to significant misclassification. Many children with no opportunity for "exposure" will be included and others who were conceived after service will be eliminated. They must have the veterans' dates of service and the dates of the reproductive events; all children and pregnancies should be included or excluded based on these dates, not on the birth year of the veteran.

Pg. 164: They found that VN+ veterans reported more difficulty having children than VN− veterans, but both cohorts reported fathering the same average number of pregnancies. These results are similar to ours.

Pg. 164-166: The analysis of miscarriages is very difficult to evaluate because only a subset of veterans are included in the analysis. We start out with 5097 veterans who were ever-married and born 1940 or later (pg. 163 Table 9). However, the miscarriage data are based on 6622 "birth outcomes" reported by 2950 veterans (pg. 164). There is no explanation why over 40 percent of the eligible veterans have been excluded from the analysis. The Table 10 (pg. 166) note says that the restrictions on the veterans now include discharged 1974 or earlier, with the first pregnancy reported subsequent to discharge, but there is no explanation of why these restrictions are needed or how many men were lost from each cohort through the application of these restrictions. I cannot comment on these findings because they are based on what is clearly a small subset of the total study group other than to say that true rates of miscarriage are in the range of 20 percent of all pregnancies. Thus, their data show a great deal of underreporting of this event in both cohorts (as did our data and most data that are based on fathers' reports).

EUGENIA E. CALLE, Ph.D.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
January 5, 1989.

Memorandum to: Members, Science Panel, AOWG.

From: Chairman, Science Panel, AOWG.

Subject: Review of the American Legion/ Stellman Papers.

Attached are copies of the reviews we have received to date on the subject study. There will be a Science Panel meeting from 11 a.m. to 1 p.m. January 10, 1989, in the Under Secretary's Conference Room, 6th Floor, Hubert Humphrey Building, to discuss this and attempt to prepare a final document for transmission to AOWG. This will be followed at 2 p.m. by a joint meeting of the AOWG and the Science Panel in the same room.

I am personally not involved in this review process but am only the convener of meetings and the sender of papers. Dr. Stephen Thacker, Assistant Director for Science, Center for Environmental Health and Injury Control, is taking the lead in coordinating these responses and preparing the final document.

Sincerely yours,

VERNON N. HOUK, M.D.,
Assistant Surgeon General, Director, Center for Environmental Health and Injury Control.

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, D.C., January 9, 1989.

Dr. VERNON HOUK,
Science Panel, Chair, Agent Orange Work Group, Washington, DC.

DEAR DR. HOUK: At your request I have reviewed the five articles by the Stellman team published in the December, 1988 issue of Environmental Research, focusing on the first and third articles in the series: exposure and health outcomes. Some detailed comments on those two papers are attached.

In summary, I believe that the authors have taken upon themselves a complex task, with limited resources; namely, investigating a possible relationship between service in Vietnam (effects of combat and exposure to Agent Orange) and adverse outcomes (health, reproduction and social/behavioral). I fear that they have fallen short of establishing a relationship between exposure to Agent Orange and adverse health/reproduction effects. More regretably, they appear to be unable to recognize this shortcoming.

Specifically, in epidemiological studies several key points must be addressed, among they being a) representativeness of the sample population selected, b) an appreciation for the accuracy/validity of the exposure measure chosen, and c) some assurance of the validity of the effects reported. The Stellman studies leave serious questions in each of these areas.

The first concern is the representativeness of the study population. The authors selected their sample from American Legion Posts from six northern/border states. They imply that their conclusions are applicable to all veterans who saw service in Southeast Asia during the Vietnam Era. Questions regarding American Legion members vs. nonmembers and possible U.S. geographic differences remain unaddressed.

The second concern lies at the crux of study; that is, the adequacy of the "exposure index" (OE3) that is used as a surrogate for exposure to Agent Orange. The potentially fatal flaw in the approach lies in the fact that the index is not a validated measure of exposure. As you know, the Science Panel, the Office of Technology Assessment, and CDC have worked for several years with all of the data used by the Stellman group, plus considerably more (i.e., troop movement data), to devise various "exposure opportunity indices", which conceptually are similar that used in the Stellman study. And yet, when the CDC index was tested for validity using human tissue analyses (at the behest of the Science Panel and along the lines recommended by Dr. Gochfeld in the accompanying editorial), the index was found to be such an inadequate surrogate that further study could not be justified. There is every reason to think that the Stellman index would suffer a similar fate when subjected to a critical test for validation.

The third concern relates to the health effects reported. In the Stellman studies these effects are "self-reported", with confirmation being sought only for the reported birth defects. The link between the reported effects—many of them subjective (e.g., headaches)—and a biologically plausible mechanism related to exposure to Agent Orange is, in many instances, tenuous at best. For example, there is no mechanism even postulated by which Agent Orange exposure to the male could lead to miscarriages later in life, without manifesting a similar effect on what the authors characterize as an even more sensitive measure of reproductive impact; i.e., birth weight.

Finally, it is surprising that the researchers, the reviewers, and the editor appear to be unaware of the work of the Agent Orange Work Group and CDC. There is no reference to the previously mentioned work on exposure opportunity index and the validation studies which have been so critical in reacting to the whole Ground Troops Study issue. Also, while referencing the immunological phenomena initially reported in the Missouri population, there is no mention of the later CDC study which essentially rescinded that earlier work.

In conclusion, I hope that the combined comments of the Science Panel members will help to put the Stellman studies into a proper perspective, thereby counterbalancing the excessive enthusiasm of the accompanying editorial. No doubt, the Stellmans will be presenting their results in various scientific meetings which will serve, to some degree, as peer review fora. However, I believe it would also be useful for a subset of members of the Science Panel to meet with the Stellmans to share our respective insights. Such an exchange of views should be enlightening for all parties.

Sincerely,

DONALD G. BARNES.

COMMENTS ON FIRST STELLMAN ARTICLE IN DECEMBER 1988 ISSUE OF ENVIRONMENTAL RESEARCH

COMBAT AND HERBICIDE EXPOSURES IN VIETNAM AMONG A SAMPLE OF AMERICAN LEGIONNAIRES

1. General Concern:

The study includes various statistical analyses which seems to supply a level of sophistication that is not merited by the crude input data themselves.

2. AO Exposure Index:

This is the key to the study. If this is faulty, then the entire discussion of effects/ AO exposure is wanting.

a. The data sources used by the Stellmans were also used by AOWG and CDC. In addition, however, the two latter groups used record verified troop location information, rather than subjective recalls.

b. It is difficult to imagine that many veterans can accurately recall their dates and locations more than a decade after the event. Clearly, such assertions should be subjected to some validation. The statement that ". . . subjects appear to have exercised considerable care in filling out this portion of the survey" is an inadequate substitute for such validation.

c. The rationale behind the exposure index is not presented here. In the earlier article, it was presented as a somewhat, but not completely, arbitrary measure which could be calculated from existing data. It would be interesting to consider a sensitivity analysis of the possible functional forms for such an index.

d. It is not clear to me how the apparent singularities (i.e., when Dij = 0, the value to the term go to infinity) were handled.

e. The quote for the half life of one year (Young, 1976) was superseded by a later reference by the same author (Young, circa 1981) indicating that 10 years was more reasonably for the halflife of 2, 3, 7, 8-TCDD in soil.

f. Could those people who classified themselves as "herbicide handlers" were actually "insecticide handlers". It would have been good to have some questions that tried to tease out this difference.

g. There is a continuing inference in the paper that "herbicide handlers" received higher exposures than others, despite having similar exposure indices. While I agree with the assertion, I believe that it should and can be supported by specific references from the literature. It would be good to estimate the extent to which the exposure of these people might exceed that of others.

h. The correlation between AO exposure index and combat score suggests that there was, in fact, a correlation between combat experience and AO application. That is, these data suggest that there was combat in AO sprayed areas and little combat in non-

sprayed areas. Is this true? I thought the combat followed AO spraying by several weeks and I would have thought that there was considerable combat in some areas which were not sprayed.

This question also arises in regard to "herbicide handlers" who according to Fig 6b had higher combat exposure than any of the AO groups, but according to p. 120 ". . . appear to have been stationed in areas of Vietnam which received an 'average' amount of herbicide spraying" (and, hence, only "average combat exposure, as deduced from Fig 6a).

i. It is not clear to me what values of OE3 are associated with "high", "medium" and "low" AO exposure index categories.

j. Conclusions challenges—due to the above concerns, I believe that the following assertions have not been scientifically supported:

(1) P. 126, "Our data . . . make the convincing point that sufficient number of troops are available and identifiable for epidemiologic study of herbicide effects.

(2) P. 126, "[From Fig. 3 it can be seen that] a sizable number of individuals were classified as "high" exposure index." How is "high" defined in terms of OE3 values?

(3) P. 127. "The availability of a readily used and inexpensive exposure classification system . . . is encouraging for future studies. Both accuracy and precision of the method are comparable to, or exceed, those used in many major environmental and occupational studies." Simply because something can be done, doesn't mean that it is correct. Further, most epidemiological studies' surrogate measures for exposure are subjected to certain validation steps. The index in this study should be subjected to such tests as well; e.g., tissue analyses.

3. Validity of responses:

Many of the concerns listed below relate to innovative approaches taken by the authors, in part, due to the considerable expense necessary to gather the information in a more conventional manner.

a. The use of Legionnaire "volunteer researchers" is interesting, particularly since these people are likely to be motivated and certainly less expensive. However, their performance (after 1-day of training) vs. that of professional trackers/interviewers used in others studies is a question.

b. The self-administered questionnaire contains many questions which are rather subjective in nature; cf "headaches". It is not clear that reports of "medically diagnosed" conditions as described by the subject would, in fact, be verified by an examination of health records.

4. "Discoveries":

The paper presents information that has been known from previous studies. For example,

a. From the abstract, "Our analysis demonstrates conclusively that mere presence in Vietnam cannot be used as a proxy for exposure to Agent Orange." First, that possibility was never seriously suggested by anyone; second, the Stellman studies have no data on exposure, only probable exposure.

b. P. 123 "The data presented here once again confirm the massive use of herbicidal agents in Vietnam."

c. P. 126 "Our data . . . provide quantitative evidence of the concomitant buildup and movement of troops alongside herbicide spray operations".

5. Lack of attention to detail:

a. "Vietnam Era" is not directly defined.

b. P. 112 talks about 3-4 million men serving in Southeast Asia. P. 113 talks about 3-4 million men who served in the military during the Vietnam Era. The connection between the two statements is unclear.

c. When originally discussing the exposure index, the authors correctly referred to it as a measure of opportunity for exposure. However, throughout most of the paper, the index is referred to as exposure itself. Common sense and the CDC human tissue analyses suggest that the two can be vastly different.

6. Representativeness of sample:

The authors do not appear to address the question of how representative of the entire Vietnam Era group the American Legionnaires are.

7. Tone:

a. Portions of the paper appear to advocate certain policy/political positions which are important and legitimate, but are generally considered beyond the realm of scientific objectivity and commentary; cf., pp. 112-113.

b. The paper seems to conclude that the very fact that the method gives *some* results, in and of itself, validates the approach; cf., p. 127.

COMMENTS ON THIRD STLEEMAN ARTICLE IN DECEMBER, 1988 ISSUE OF ENVIRONMENTAL RESEARCH

HEALTH AND REPRODUCTIVE OUTCOMES AMONG AMERICAN LEGIONNAIRES IN RELATION TO COMBAT AND HERBICIDE EXPOSURE IN VIETNAM

1. Study design:

A. P. 153. The study chose not to examine malignancies due to the small numbers and latency issues. In fact, one of the most contentious issues deals with cancer (soft tissue sarcoma) which has been implicated in other studies. Some of the cohort have been exposed for 25 years, arguably sufficient latency for some tumors.

2. Classification issues:

a. P. 153. "SEA (in country)" suggests an equality between service in Southeast Asia and presence in Vietnam. It is not clear that this is correct. Also, length of stay in Vietnam is not addressed in this procedure.

b. P. 154. "Medically diagnosed" is something of a misnomer since this is still a self-reported classification.

c. P. 156. Here we find "high", "medium", and "low" AO exposure defined in terms of OE3 values, which were not apparent in the first paper. The choice of these divisions is not discussed and seems a bit strange; e.g., the mean value is in the "high" category.

d. P. 157. It is not clear that handlers of chemicals did or did not know that they were handling herbicides.

3. Verification:

a. P. 154. It is not clear why birth defects was the only endpoint for which it was considered necessary to obtain verification.

4. Clarity of the issue and rationale for choices:

a. P. 156. The reasons for selecting the particular endpoints for study are not clear. Not all of them are related to AO or combat; e.g., venereal disease.

b. P. 156. AO has been associated with "chloracne". The connection of this specific condition to "skin rash with blisters" is not clear. For example, poison ivy should not be confused with chloracne!

c. P. 161. The connection between the symptom components and AO is not clear; c.f., "Aches" which consists of "Headaches", "Back pain", and "Neck and shoulder pain".

5. "Symptom complexes":

a. P. 154. The paper should discuss the biological rationale, not simply appeal to the statistical justification, for these five symptom scales.

a. P. 159. It would be interesting to see what type of correlation there is between the variables (combat and AO exposure) and each of the 28 health conditions.

6. Cautionary notes and significance:

a. P. 160. It should be noted that the mean Fatigue score was 14.60, out of a possible value of 44. This means that the average score for any one of the 11 health conditions contributing to the Fatigue scale was 1.3; i.e., closer to "1 (not a problem)" than to "2 (minor problem)". The average value for the components in the control was 1.2. It is hard to see that there is much of a difference or, if there is a difference, whether there is much significance.

This argues even more for an analysis for each of the health conditions separately.

b. P. 162. In similar vein, the values in Table 7 should be viewed from the perspective that the maximum value for each of the other four symptom scales is 12. The value recorded here is in the 3-5 range: i.e., an average of 1-2 per component or between "1 (not a problem)" and "2 (minor problem)".

7. Reproductive effects:

a. P. 162. It is not clear that eliminating men born before 1940 successfully eliminates reproductive experiences which occurred before the Vietnam era. Men born in 1940 would have been between 24 and 35 during the Vietnam era (1964-1975), which leaves more than ample time for pre-Vietnam reproductive experiences.

b. P. 164. Several measures of reproductive effects are examined. Only after special statistical treatment was one is identified as being AO exposure related; i.e., miscarriages. There was no discussion of the significance of this finding in the light of the other results which did not show a positive relationship. Some attempt should be made to include a discussion of the entire set of data taken together.

c. PP. 161-168. While various endpoints are discussed and analyzed, there is no discussion of biological plausibility that would account for the data presented. For example, it is not apparent how effects on males could influence reproductive outcomes many years later. This is particularly the case in light of an experimental examination of an animal model (Lamb, et al, circa 1982, NIEHS) which showed no association. Similarly, one might anticipate that birthweights should also be affected if AO is a reproductive effects agent.

8. Attention to detail and work of others:

a. P. 151. Unclear distinction made between 2,3,7,8-TCDD and "dioxins".

b. P. 152. The 1986 study by Hoffman has been superseded by a later study of the same population which suggests no effects.

c. P. 152. There is no mention of the pending NIOSH studies which promise to have considerable impact on this issue.

OFFICE OF THE ASSISTANT
SECRETARY OF DEFENSE,
Washington, DC, January 6, 1989.

Dr. VERNON N. HOUK, M.D.,
Chairman, Science Panel, Agent Orange Working Group, Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: I have read the studies published in Environmental Research. I believe the major discrepancy in this study is the fact that they have no objective evidence of exposure such as serum dioxin. Since the CDC has demonstrated that with serum measurements you cannot distinguish

a group defined as exposed from a group defined as not exposed using military records, any studies subsequent to that would not have as much weight as they might prior to availability of that objective evidence. While there are a number of specific areas in the selection of the population, the method in which the individuals were questioned, and the use of a select group such as the American Legion, these deficiencies can be seen in other epidemiological studies as well. Without an objective measure, describing the minimal effects observed as dose-related overstates the case.

Dr. Jerome Bricker has also reviewed this information. Since his experience in the analysis of spray patterns and the HERBS data set is so extensive, I am including his complete analysis of the American Journal of Industrial Medicine article.

Sincerely yours,

DAVID E. UDDIN,
Capt. MSC, USN,
Senior Policy Analyst for Medical Research.

REVIEW PREPARED BY DR. JEROME BRICKER

1. "Combat and Herbicide Exposures in Vietnam among a Sample of American Legionnaires," by S.D. Stellman, J.M Stellman and J.F. Sommer, Jr.

Since the conclusions in this and subsequent articles in the series concerning Vietnam veterans exposure to Herbicide Orange are based on the original methodology proposed by the authors in the 1986 article entitled "Estimation of Exposure to Agent Orange and Other Defoliants Among American Troops in Vietnam: A Methodological Approach" published in the American Journal of Industrial Medicine 9:305-321 (1986) it is necessary to first point out the potential problems believed to exist in the exposure estimation methodology. In the introduction the authors state that the 2,4,5-T used as Herbicide Orange was heavily contaminated with TCDD with a mean concentration of 2 ppm. The authors point out that the LD50 for guinea pigs is less than 2 micrograms/kg of body weight, however, they fail to mention that a similar LD50 for hamsters is 5000 times greater.

In the Materials and Methods section of the 1986 article a spray track diagram is presented for Ranch Hand missions flown near Pleiku with the city as the center point of three concentric circles of 5, 10, and 15 km radii. The authors did not seem to consider the meteorological and wind effects on these spray tracks. In this case, if the winds during this spray mission came from either the south or west then there would be no likely exposure to persons in Pleiku. At a release altitude of 150 ft. above the trees by C-123 (Provider) spray aircraft at a speed of 130 knots, even with the worst possible wind conditions (directly from the NE and greater than 10 knots) the downwind travel of any recordable amount of the herbicide would not have exceeded 2000 feet or less than a kilometer, hence probably none of the agent would have reached Pleiku. The authors are probably not familiar with the various military simulation models based on actual field test results for a line source release of chemical agents under various meteorological conditions. The Ranch Hand missions were planned and executed to put down a maximum concentration of herbicide in a per plane swath width of 260 (+/−20) foot spray line. The missions were accomplished either at the break of dawn or just at dusk when wind conditions were almost still. Missions were aborted if the wind speed exceeded 10 knots to avoid lateral dispersion of the herbicide and thus degrade the desired herbicide effects or possibly cause deleterious effects on friendly Vietnamese agricultural plots.

The authors use a decay rate of 1 year for TCDD, this may be true when the TCDD is adsorbed into the soil and is protected from the effects of light. The herbicide from the Ranch Hand missions was primarily deposited on triple canopy jungles requiring penetration through the foliage canopy with only 6 percent reaching the ground. Hence 94 percent of a typical aircraft herbicide load was deposited on the leaves of the three levels of jungle canopy. Most of the Ranch Hand missions were conducted at dawn, therefore the TCDD contained in herbicide orange would be exposed to photolytic decay from the sunlight during the day. The photodechlorination of TCDD at position 8 to produce 2,3,7-tri CDD have been reported to decrease the toxicity by 10,00D times. The detoxification of 2,3,7,8-TCDD is reported to proceed three times faster at 30 degrees C. (mean annual daytime temperature of Saigon) than at 23 degrees C. Under such sunlight conditions TCDD contained in the herbicide has been found to have a half-life of 2 hours on leaves. Therefore, by sundown of the day of a dawn spray mission the remaining TCDD on leaves would be about 3.125 percent of the original concentration deposited at 8 A.M. in the morning by the Ranch Hand spray mission. TCDD deposited on grasses (part of the 6 percent which penetrated the canopy and reached ground level) has been reported to have a half-life of as long as 6 days. Only when the TCDD enters the soil is its half-life postulated as 1 year. Hence the entire calculation of exposure is based on an exceptionally long TCDD half life situation since the great preponderance of the herbicide was deposited on the leaves where photolytic decay of TCDD was effective. The authors may not be aware that much of the herbicide was absorbed into the leaves within 30 minutes of application and hence was entrapped in the leaves, still subject to photolytic decay, but unavailable to expose humans. Thunderstorms taking place within 45 minutes after spray application did not wash off the herbicide as defoliation still took place four to six weeks later. The authors relate their 1 year decay rate of TCDD on the findings of herbicide Orange spraying of range C-52A at Eglin AF Base. This was a flat, sandy plot of land, 1 mile on each side, completely without any significant trees or vegetation. It received 948 pounds of herbicide per acre total and was considered to be the most heavily sprayed area in the world. Sometimes more than one spray mission would be made on the range during the same day. Such massive daily applications of the TCDD containing herbicide quickly penetrated the sandy soil and became protected from photolytic decay. This test situation was not comparable to the triple canopy jungles that were primarily defoliated by the Ranch Hand spray aircraft.

The use of three radii of 5, 10, and 15 km. from the spray line or spray source appears to be very excessive based on Eglin AF base spray trials and helicopter spray testing. In one severe Eglin test 100 micron droplets of Orange were carried 1594 feet in a lateral track from the flight path in a 9 knot cross wind. These 100 micron or smaller droplets (smaller than the width of a human hair) constituted 1.88 mean percent of the herbicide load. Droplets ranging from 50 to 70 microns constitute only 0.09 percent of the herbicide Volume, however these droplets could travel a maximum distance of 2.01 km. in a 9 knot wind. The rate of deposition for these 50 to 70 micron droplets would be 0.DOD2 gal/acre, or infinitesimally small amount of TCDD beyond 2 km. Helicopter spray testing produced, under strong cross wind conditions, a maximum swath width of 1020 feet at a flight altitude of 75 feet. In this test 93.9 percent of the herbicide mass was deposited in a swath width of 440 feet. Consequently, it is believed that the exposure consideration should have been limited to a maximum distance of no more than 2 kilometers from the spray source within a maximum period of no more than three days after the spray mission date. No significant residual contamination would be expected to exist in the jungle environment because of the confinement of the spray and photolytic decay of the TCDD on the leaves and grasses.

It should also be noted that in certain aspects the HERBS tapes were quite accurate. However there are certain hidden discrepancies such as the fact that although a mission may have listed 1000 gallons as disseminated the A/A45Y-1 herbicide spray tank (1 per C-123 aircraft) could not be filled beyond 970 gallons or it would not function properly. Also in the Services HERBS tape there were about 5 percent of the sprays with unknown herbicide being sprayed. The article places much emphasis on the use of backpack sprayers being used for firebase and perimeter spraying. This was not a very effective method as many of the areas needing spraying were heavily mined and thus dangerous to a man on foot. Many other methods were used such as the HIDAL helicopter spray system used in H-19 and H-34 helicopters, field expedient spray systems using 55 gal drums and field constructed spray booms on UH-1B and UH-1D helicopters, Agrinautics spray systems for UH-1B/D helicopters in 1967, jeep mounted Buffalo Turbines used along roads and around perimeters, and power driven decontaminating apparatus mounted on large trucks. These truck mounted devices contained up to 600 gallons of herbicide which could be disseminated through fire hoses at a considerable lateral distance over mine fields. Limited spraying was done with backpack garden sprayers because of the restricted distance of the spray.

The authors seem to assume that a circular area of contamination exists out to ranges of 5, 10, and 15 kilometers. This could not logically take place as 87 percent of herbicide disseminated from the A/A45-Y1 spray system used in the Ranch Hand C-123's was in droplets having a mass median diameter between 100 and 500 microns. These droplets travel with the wind and behave the same as other liquid agent droplets. They have well defined fall rates based on their diameters, and impact on the ground at predictable times and concentrations depending on the wind speed and the meteorological lapse rate conditions. The fallout plots are in some ways comparable to radioactive fall-out plumes and would not be circular in all directions. In a no wind inversion condition very little lateral transfer takes place as was so graphically evidenced by the sharp edged defoliated spray areas recorded by aerial photographs after defoliation had taken place subsequent to the Ranch Hand missions. Therefore, personnel upwind and lateral to a spray mission would not be exposed. Only those directly downwind in the fall-out plume would have any

likelihood for exposure. In only one case, such as a helicopter spray mission completely around the circumference of a small firebase could you consider that all of the personnel within the firebase could be exposed. Any long distance spray line release, such as was routinely accomplished by the Ranch Hand aircraft, would have a fallout plume in one direction that is downwind of the prevailing wind and this would be fairly well defined by the settling rate of the various droplet sizes. During this downwind travel, these droplets would also be acted upon by the sunlight and evaporative processes, and by dilution within the air currents. For example, 13 percent (about 126 gallons/1000 gal. tank) of the herbicide Orange released from a Ranch Hand aircraft flying at an altitude of 150 feet above the jungle canopy was lost to evaporation before the herbicide reached the top layer of foliage which further decreased the amount of herbicide used in earlier calculations. This evaporative process would continue with time as the cloud traveled downwind. A 100 micron droplet in a no wind condition takes about two minutes to fall 150 feet, while a 500 micron droplet would take only 2¼ seconds.

Another consideration in the exposure methodology comes from the fact that throughout the several years of spraying of herbicides only about 1/10 of South Vietnam was sprayed. In many parts of Vietnam there was not any need to spray, and thousands of troops were in these non-treated areas. The major portion of the Ranch Hand spraying was over densely forested jungle areas occupied primarily or continually by enemy troops. The defoliation missions were conducted to expose the enemy caches, training sites, storage facilities, and supply trails to observation from our aircraft so we could bomb and strafe these targets. The Ranch Hand Squadron aircraft had the highest battle damage of any Air Force unit in Vietnam. They constantly encountered enemy ground fire during their spray missions. Fighter aircraft were allowed to strafe the sources of this enemy fire. Many of these enemy areas were repeatedly sprayed but these were areas which were never fully controlled or occupied by American forces. Hence thousands of gallons of herbicide were distributed over enemy controlled areas with no likely possible exposure to American or Vietnamese forces. Forces even 5 km upwind or to the side of a spray track would have no possible exposure probability. It is believed that the model should have concentrated more heavily on the exposure probabilities to spray operations along our friendly lines of communications and roads, perimeter spraying of firebases, base camps, and along the banks of rivers. At least in these locations there was a minor possibility of some exposure to our personnel. However, as the authors point out by the heading of their Fig. 3, these were "Minor Uses of Herbicides in Vietnam, 2965-71". Such a specific modeling methodology would have required an exact day-to-day geographic placement of each responding veteran rather than the generalized method of using 100 geographic place names over extended periods of assignment time based on recall of events some 10 to 15 years earlier. Further, many of these combat veterans may have been stationed in one location but they could have been airlifted into combat situation by helicopter far from their base location for extended periods of time. A day-to-day exact location plot for each member would have to be made before reasonable exposure probability could be developed.

The authors downplay the possibility that a veteran could have known the many locations of the Ranch Hand spray missions because he was not likely to have access to the HERBS Tapes. This may not be completely factual as many copies of the official HERBS tape document were supplied to individual veterans, veterans groups and to State Veterans Organizations. Further, a publication containing the HERBS Tapes and detailed maps was published out in California by a private organization and sold to veterans for $25.00 each. This large oversized document contained detailed information as to how to plot your assigned location to that of a Ranch Hand spray track. Also hundreds of letters were answered by the Department of Defense in which the veterans were told how they could obtain copies of the HERBS Tapes from the National Technical Information Service either in hard copy or microfiche and gave the mailing address and purchase cost. Therefore, the HERBS tapes were no secret to many veterans, veterans organizations, and state veterans commissions.

The authors point out in their 1986 article that men could have been exposed by spending time in areas long after spraying took place. They then went on to mention that tissue samples from rodents, birds, fish, and reptiles trapped several years after spray tests were halted at a Florida test site (Range C-52A probably) contained traces of dioxin. They neglected to mention that these animals had lived their entire life in this area, ate the vegetation which may have contained the TCDD, burrowed in the sand which was heavily (948 lbs/acre) contaminated, licked their fur, and may have inhaled sand and soil dust containing the TCDD that had penetrated into the soil before sunlight could act upon it. It is not surprising that the beach mouse had 300 to 2400 ppt levels of TCDD. But, troops did not have that exposure nor live in a contaminated area for years. No area in Vietnam ever received the per square meter concentrations of Orange as was laid down on this range or spilled at the loading sites.

For the reasons stated in the preceding paragraphs, the model equations would seem to overestimate the possible exposures to troops stationed in Vietnam and would generally be quite liberal as to exposure probability.

In the most recent article, 1988, the authors provided a breakdown in Figure 1, of the amounts of the various herbicides and the purpose such as defoliation, crop destruction, and base perimeters. A much more meaningful chart would have been to show the number of gallons of herbicides distributed by year by Corps area. A chart should also have been included as to the numbers of those considered exposed persons serving in each of the four Corps areas. The III Corps area received about twice as much herbicide as the other Corps areas.

One particular puzzling finding was that "Herbicide Handlers had the highest mean combat scores, about 50 percent higher than those with the lowest Agent Orange index OE3." Herbicide handlers are not fully described as being exclusively combat infantrymen or whether they were support troops. These herbicide handlers may never have been in contact with Herbicide Orange, as they may have only taken part in the use of agents blue or white for perimeter clearing of firebases. The herbicide handlers need to be questioned in great detail to effectively establish exposure.

The good correlation between high OE3 Orange exposures and high combat exposures is quite logical when radii up to 15 km. are used for the exposure model. Ranch Hand aircraft often sprayed where the enemy was concentrated or known to be operating and consequently our troops would be expected to be near these enemy controlled areas trying to engage them in combat. But these proximities do not mean that our troops were sprayed on or even entered defoliated areas while there was any residual hazard present. There was no way in which an infantry soldier could by observation determine which herbicide was used on an area he may have passed through or tell exactly how recently it was sprayed.

In the Discussion Section of the article, the authors compare the yearly spraying amounts of herbicides with the number of American troops present in Vietnam by year and state that this comparison makes the convincing point that sufficient numbers of troops are available and identifiable for epidemiologic study of herbicide effects. This premise might be valid if there was a direct correlation such that herbicides were sprayed in the largest amounts in areas where the highest concentrations of troops were located. This was not the case, the herbicides were used where they were needed to open up dense enemy controlled jungles so we could bomb and strafe the enemy supply routes, caches, camps, and assembly points and to destroy enemy controlled agricultural plots. This premise might then be much more applicable to Vietcong and North Vietnamese troops than our American forces. Large numbers of American and allied forces served in areas in Vietnam which never required herbicide applications because of the nature of the environment and foliage cover. One must remember that only 1/10 of Vietnam was ever sprayed with herbicides, and some of this 1/10 area was strongly held by enemy forces, and required yearly respraying to keep the jungle open for observation of the enemy and bombing of his routes of supply and assembly locations.

DEPARTMENT OF THE AIR FORCE,
Brooks Air Force Base, TX,
December 30, 1988.

DR. VERNON N. HOUK, M.D.,
Director, Center for Environmental Health and Injury Control (F29), Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: My comments concerning the series of reports on the American Legion/Columbia University study of Vietnam veterans fall into five primary areas: the exposure index, statistical interpretation, questionnaire format, bias, and literature review. Many of my comments cross several of these areas. I have summarized my impressions below but have included specific comments about each individual report or document in an attachment.

The most significant problem of these reports is the calculation of exposure indices based on probabilistic models. The exposure indices used by these authors is similar in many respects to the index used in the CDC validation study. The CDC index was the more accurate of the two since it was based on records of actual troop locations rather than memory of respondents nearly two decades later. Even the more accurate CDC index was found to be invalid as a measure of herbicide exposure. Locations of military service were provided from memory by the respondents and the authors made no attempt to determine the accuracy of those reports. They state that "lying" by respondents would not affect the index, but other-

wise ignored the misclassification that could have resulted. These data were collected only to the general area of named towns, villages, and the military areas by month. In contrast, the HERBS tapes contain data by day and time. This difference in precision further limits the comparability of these data sources.

The initial article on the exposure indices was published in 1986, before the CDC validation data were available. However, the authors had ample time before the publication of the reports in Environmental Research to take those results into account. They did not make use of the CDC work despite more than 12 months in which to make revisions.

The authors also make several untenable assumptions in calculating the indices. They use an estimate of 1 year as the half-life of dioxin in the environment; however, the half-life is on the order of hours to days as long as the dioxin is not bound in the soil. Once in the soil, its availability to troops traveling through the area would be minimal. The use of up to 15 km. from herbicide spraying is also an overestimation of the area of spray drift. In the light of the imprecision of determining locations of service, an area this large was probably necessary in order to have enough "exposed" men to study. Terrain features and prevailing winds are also ignored in the index. Troops upwind of spraying and those protected by high terrain would not have been exposed.

The use of sophisticated mathematical techniques to calculate the indices does not automatically make them valid. The indices are only as good as the quality of the primary data, which is known to be invalid. The fact that the authors cite a high correlation between two of their indices (r=0.88) does not make either index accurate or valid. It is likely that only the 83 men who reported handling herbicides were actually exposed. This group represents only approximately 4 percent of the studied group.

The questionnaire is poorly designed. The data on illicit drug use are likely to be seriously underreported. Data of this type must be collected by random response techniques to obtain reasonably accurate data. The location of the questions about attitudes toward the VA before questions on health could have biased subsequent responses. The answer choices are unbalanced with three "true" choices and only one "false" choice. Many of the questions are also biased in wording; the use of words like "fully" and "all" should not be used. Veterans not needing pension or compensation services should not be expected to be "very" knowledgeable about these programs. Many questions ask for opinion about "most" veterans; this is biased. Questions are generally superficial and choices are often poor, leading to possible sources of bias. Questions about attitudes toward the VA are generally biased in wording. Some endpoints such as "skin rash with blisters" are unnecessarily vague, making interpretation hard, while the authors ignore the fact that all endpoints were "reported"; none were verified.

The interpretation of correlation coefficients throughout the reports is flawed (0.08 and 0.15 are NOT significant correlations). Most correlations between the exposure index and endpoints are 0.30 or less, a level that shows poor correlation at best. The fact that correlations were all statistically significant is irrelevant. The low p value is an artifact of large sample size and the sum of all pairwise relationships in the correlation matrix. This p value has no bearing on the validity of the correlations, with most showing only poor associations at best. The p values only indicate a measure of pairwise variance of large sample sizes and not the validity of the correlations.

All of the conclusions may be biased by the characteristics of Legion members. Use of American Legion members could induce significant selection bias, due to differences between members and nonmembers. The use of "volunteer" researchers may also generate bias in identification. There is no method of quality assurance of their work. The use of Legionnaires raises the issue of significant selection bias since they are not representative of all Vietnam veterans. The authors demonstrate lack of participation bias between SEA and non-SEA vets but not between members and nonmembers. Do Vietnam vets join the Legion in different patterns than non-Vietnam vets? This issue is not addressed and could cause severe bias. The racial distribution is markedly different. Blacks are underrepresented in the study (only 1.5 percent). These results could be biased by the patterns of membership in the Legion. This finding may represent reporting bias, but the possibility is never considered by the authors.

The statement that "Mean levels of Agent Orange exposure were ALWAYS significantly higher in . . . miscarriage . . ." appears unlikely. Surely some miscarriages occurred in women married to "low" men. This elevation in every case is highly to highlight the effect of overreporting. The use of Legion representatives who work full-time in monitoring the VA to develop the questions is inappropriate.

The editorial group appears to be quite limited with 22 percent currently at Mt. Sinai (13 of 58). This fact, coupled with the failure of reviewers to recognize the results of the CDC validation work, leads me to doubt the thoroughness of peer review. The subjective opinions of the authors are clear in the text, e.g., ". . . CDC has declined to perform . . . arguing nihilistically . . .," and comments on the "reluctance" of the VA show prejudice. Evaluation of attitudes toward the VA seems to indicate a political motive to the study. This is not appropriate for a scientific journal. The articles are rife with value-laden terminology and demonstrate a major lack of objectivity in interpretation.

The literature cited is not a complete summary of available data. Selective citation of references is evident throughout the reports. There is no attempt to differentiate between acute effects and long-term effects of exposure. The literature review does not discuss the differences between exposure of pregnant females and males. Repeatedly, pertinent and recent data were not cited or used.

Sincerely,

WILLIAM H. WOLFE,
Colonel, USAF, MC,
Chief, Epidemiology Division.

COMMENTS ON THE STELLMAN STUDIES

Environmental Research 47, 109-111 (1988)

EDITORIAL

Page, paragraph, and comment

There appears to be a limited editorial group, with 22 percent of those listed currently working at Mt. Sinai (13 of 58). I doubt the thoroughness of the peer review given to this series of articles.

P. 109, 3: Subjective opinions are clear in text that ". . . CDC has declined to perform . . . arguing nihilisticly . . ." Study was halted when accurate assessment of exposure indicated that identifiable ground troops had no increase in TCDD.

P. 110, 1: Ignores CDC ground troop validation-Published the month before these articles were submitted and 14 months before publication; allowing adequate time for revision.

P. 110, 3: Ignores the fact that all endpoints were "reported"; none were verified.

P. 110, 5: Comments on the "reluctance" of the VA show prejudice; inaccurate statements are made without evidence.

P. 111, 2: The measure of exposure is invalid by CDC work; data are unverified.

American Journal of Industrial Medicine 9:305-321 (1986)

ESTIMATION OF EXPOSURE OF AGENT ORANGE

Page, paragraph, and comment

P. 305: The probabalistic model is shown to be invalid by CDC work. This article was published before that work, but is now invalid. The indices are "opportunity" indices, not "exposure" indices. The use of 1 year half-life is probably too long in a non-soil environment.

P. 306, 2: The use of "heavy" to characterize contamination is very selective and ignores data on other species with different thresholds.

P. 306, 3: The effects cited are primarily acute effects with the exception of chloracne.

P. 306, 4: The key question of "exposure" is not validly addressed.

P. 306, 5: Citation of AFHS data omitted caution that data on birth defects was not verified.

P. 308: No attempt was made to validate the index or determine its accuracy. The index is basically the same as that used by the CDC. 309 1 The CDC index was more accurate, as it was based on records of troop locations and not on memory of place names 10 years later. 2 The use of a 15 km. area is excessive and fails to consider terrain effects and wind direction. Both are key to assessing actual exposure risk.

P. 308, 3-5: Sophisticated math manipulations and formulae are only as good as the weakest data element. Therefore, the index in this study is worthless in light of lack of correlation between serum TCDD and troop locations and self-reported exposure by ground troops (CDC).

P. 310, 1: Use of memory to pinpoint location of duty is crude when relating to specific and far more accurate spray locations. 311 1 Six to 10 miles (10-15 km.) had to be used to get adequate number of subjects. Failure to account for terrain and wind make this an estimate of maximum likelihood and creates severe missclassification.

P. 310, 3-5: No attempt was made to assess accuracy of the reported locations. Memory collected to month, but HERBS tapes to day and time. Authors doubt "lying" affected the reporting. This does not make the reports accurate for placement in/near sprayed areas.

P. 317, 1: The fact that the index is similar to methods used in industry is not reassuring. Old studies are most likely as weak as this one.

P. 3320, 1: The statement is made that the method is "readily applied at minimal expense" is true, but it is not based on reality. It should not be confidently used in any studies. The AFHS index is probably more valid than this one, and it is being replaced due to its weaknesses.

Environmental Research 47, 112-128 (1988)

COMBAT AND HERBICIDE EXPOSURE

Page, paragraph, and comment

P. 112, abst: Use of American Legion members could Combat and Herb Exp induce significant selection bias, due to differences between members and nonmembers. Authors cite a correlation coefficient of 0.24 as meaningful. This is at best only a weak relaltionship between combat and exposure to herbicides. This error of interpretation is seen throughout these reports. Authors had access to CDC data for more than a year but failed to use or cite the data in revisions of the manuscript.

P. 112, 2: Authors are standing on a "soapbox" using overstatements and ignoring contrary reports and data.

P. 113, 4: Evaluation of attitudes to VA seems to indicate a political motive to the study. This is not appropriate for a scientific journal.

P. 114, 3: Assumption that the index measures exposure to herbicides is incorrect.

P. 115, 2: Use of "volunteer" researchers may generate bias in identification. There is no method of quality assurance of their work.

P. 116: Same comments as on pages 308-311 of AJIM.

P. 117, 2: The fact that two calculated indices are highly correlated (0.88) does make either one accurate or valid.

P. 120, 3: The 83 men who were herbicide handlers are the only ones in the study truly exposed. They represent only 4% of the studied group.

P. 124, 1: Mere proximity in time and space does not equate to actual exposure. 4: The use of Legionnaires raises the issue of significant selection bias since they are not representative of all Vietnam veterans. Authors demonstrate lack of participation bias between SEA and non-SEA vets but not between members and non-members. Do Vietnam vets join the Legion in different patterns than non-Vietnam vets? This issue is not addressed and could cause severe bias. Racial distribution is markedly different.

Environmental Research 47, 129-149 (1988)

SOCIAL AND BEHAVIORAL CONSEQUENCES

Page, paragraph, and comments

P. 129: Article is rife with value-laden Social Consequences terminology and demonstrates a major lack of objectivity in interpretation.

P. 129, abst: Scales for herbicide are not "validated as stated. Some selection factors may account for some of the findings. The observed combat effects are clear, but it is unclear to what extent they are real or are influenced by selection bias. The statement on the interactive "effect" with concurrent exposure to herbicides is not valid in the light of the deficiencies in the exposure index.

P. 130: The literature cited is not a complete summary of available data. Selective citation of references is evident.

P. 131, 2: As previously noted, the index of exposure is quite weak.

P. 132: None of the endpoints were verified by records review or examination. 133, 2: Mere proximity over an extended time to a sprayed area does not equal exposure.

P. 134, 1: Blacks are underrepresented in the study. Only 1.5 percent vs at least 12 percent overall.

P. 135: The study suggests that combat had some adverse effect, but the effect of selection bias is not considered or accounted for. The conclusions that income loss has occurred is not supportable from these data.

P. 136-137: The analyses of outcomes with the exposure index are conspicuously absent.

P. 138, 2: These results could be biased by the patterns of membership in the Legion.

P. 138, 4: The sophisticated exposure indices are essentially worthless in view of the lack of a relationship between probabalistic indices and actual exposures as measured by serum levels.

P. 139, 3: The statement that all measures are correlated with combat is false. All correlations are .30 or less, a level that shows poor correlation at best.

P. 140, 2: The fact that correlations were all statistically significant is irrelevant. The low p value is an artifact of large sample size and the sum of all pairwise relationships in the correlation matrix. This p value has no bearing on the validity of the correlationships, with most showing only poor associations at best.

P. 144, 4: The use of manufactured data for an analysis of alcohol use should be deleted. The assumptions implicit in the calculation make it untenable.

P. 147, 1: The data on illicit drug use are likely to be seriously underreported. Data of this type must be collected by random response techniques to obtain reasonably accurate data.

P. 148: The conclusions may be biased by the characteristics of Legion members. The interpretations of correlation coefficients is flawed (0.08 and 0.15 are not significant corrections). There is no discussion of the limitations of the exposure index, especially in view of 1987 CDC data. There was ample time for these data to be included or cited in this publication.

Environmental Research 47, 150-174 (1988)

HEALTH AND REPRODUCTIVE OUTCOMES

Page, paragraph, and comments

P. 150: There is heavy use of value-laden Health and Repro terminology in this paper. There is no mention of probable existence of differential reporting and its bias, absent the conclusions concerning herbicide exposure are unwarranted.

P. 151, 2-3: The literature review does not discuss the differences between exposure of pregnant females and males.

P. 152, 1: Pertinent and recent data were not cited or used.

P. 153: None of the claims of exposure were validated and health endpoints were not verified.

P. 154, 1: Some endpoints such as "skin rash with blisters" are unnecessarily vague, making interpretation hard.

P. 154, 3: There is no attempt to differentiate between acute effects and longterm effects of exposure.

P. 155, 1: Pre SEA reproductive experiences were discussed. This is potentially an important confounder.

P. 159, 2: All correlations are misinterpreted. The p values only indicate a measure of pairwise variance of large sample sizes and not the validity of the correlations.

P. 160, 4: The index does not measure exposure to herbicides. It measures something else but what is not clear.

P. 162, T: All correlations for year of birth, combat and "Agent Orange" are poor.

P. 163, 2: Data on the variable "child bearing attempts" is presented. What is the purpose of this variable? Why would Vietnam vets want to have more children? This appears to be a chance finding.

P. 164, 2: This finding may represent reporting bias, but the possibility is never considered.

P. 166, 2: Statement that "Mean levels of Agent Orange exposure were ALWAYS significantly higher in . . . miscarriage . . ." appears to highlight the effect of overreporting. This elevation in every case is highly unlikely. Surely some miscarriages occurred in women married to "low" men.

P. 170, 2: Again, no verification was attempted.

Environmental Research 47, 175-192 (1988)

POST-TRAUMATIC STRESS DISORDER

Page, paragraph, and comments

P. 175: This appears to be the best written of PTSD the series. It was clearly authored by a psychologist or psychiatrist.

P. 179, 1: Response bias is accounted for, but selection and reporting biases are generally ignored.

P. 179, 2: The group under study is not representative of any group other than American Legion members (too many whites).

P. 182, T: The numbers in the tables are not consistent (Tables 2-6).

P. 190, 3: This is the first mention of self reporting bias in the series.

VIETNAM ERA VETERANS STUDY (STELLMAN ET AL.) QUESTIONNAIRE

The questions are generally superficial and the choices offered to the respondent are often poor, leading to potential sources of bias.

Data locations of service in Vietnam are only "accurate" to the month. This makes it difficult to relate veterans activities to daily spray missions.

Questions about attitudes toward the VA are generally biased in wording.

The health inventory is very cursory, vague in many areas and only covers 1½ pages.

Questions on alcohol and smoking are so short that the data are probably unreliable for any reasonable analysis.

Environmental Research 47, 193-209 (1988)

UTILIZATION, ATTITUDES AND EXPERIENCES

Page, paragraph, and comments

P. 193, abst: Biased terminology is prevalent in VA in this VA report. The effect of the media and its effect on reporting is not considered.

P. 196, 1: The use of Legion representatives who work full-time in monitoring the VA to develop the questions is inappropriate. This likely injected bias in the questionnaire, as evidenced by the wording of the questions.

P. 196, 7: The location of the questions about attitudes toward the VA before questions on health could have biased subsequent responses. The answer choices are unbalanced; 3 "true" choices and only 1 "false" choice.

P. 198, 2: Supporting data for the statement about major medical insurance and combat level are lacking.

P. 202, T: Many of the questions are biased in wording. The use of words like "fully" and "all" are biasing. Veterans not needing pension or compensation services should not be expected to be "very" knowledgeable about these programs. Many questions ask for opinion about "most" veterans; this is biased.

P. 203, T: Only data for selected questions are presented in table and text. Where are results for other questions?

P. 203, 3: In interpreting responses, "slightly true" is interpreted as a negative

response. Words such as "considerable proportion" convey vagueness.

P. 208, 1: Use of "particularly disturbing" is not objective, and should be reserved for an editorial. Bias of the author is clear.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
December 30, 1988.

Dr. VERNON HOUK, M.D.,
Director, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: In response to your letter of November 22, 1988, please find enclosed our review of three papers by Stellman *et al.*, 1988 one paper by Snow *et al.*, 1988, and the editorial by Michael Gochfeld, which are based on a single study conducted on a sample of American Legionnaires. The review was completed by Marie Haring Sweeney, Teresa Schnorr, Ph.D., Victoria Wells, M.D., Ph.D., and Marilyn Fingerhut, Ph.D. Each paper is reviewed separately. A summary of our findings is presented here:

This largely negative study of a sample of American Legionnaires, who served in Vietnam and in other areas, does not confirm that experience in Vietmam caused serious health or reproductive effects among the sample of Vietnam veterans compared to non-Vietnam veterans. Serious methodological limitations include incompleted ascertainment of the target sample, lack of verification of self-reported health conditions and reproductive events, inadequate control of risk factors such as smoking and other factors in the analysis of health outcomes, and absence of adjustment for multiple comparisons. The limitations require that the few positive findings be interpreted cautiously.

The detailed reviews of each article are enclosed.

Sincerely yours,

MARIE HARING SWEENEY,
Chief, Dioxin Activity, Industrywide Studies Branch, Division of Surveillance, Hazard Evaluations and Field Studies.

COMBAT AND HERBICIDE EXPOSURES IN VIETNAM AMONG A SAMPLE OF AMERICAN LEGIONNAIRES

Stellman S, Stellman JM, Sommer JF., Environmental Research 47, 112-128 (1988)

This paper presents a brief description of methods used to estimate exposure to Agent Orange using a "probabilisitic exposure index" based on information on spray missions carried out in Vietnam (date of application, herbicide type and coordinates of application) and methods to calculate level of combat experience. Methods for selection of the study population and the resulting participation rate were also discussed.

Selection of study population, data collection methods and participation rate: Major concerns include biases introduced due to possibily incomplete ascertainment of the target population, the data collection methodology of a mailed questionnaire, and the low participation rates.

Population selection: The study population was composed of members of the American Legion in six states who had been members for less than 20 years as of 10/1/83. Selection bias and the problem of non-representativeness of the study population are inherent in this type of study because the subjects are self-selected as members of the American Legion, thus omitting nonmember Vietnam and Vietnam-era veterans. This study is unlike the CDC study which included a sample of all living Army veterans. Yet like the CDC study, the design is cross-sectional, omitting those who died prior to the study. The Stellman study (1988) also excludes members who let their membership lapse.

A particular concern of this study is the potential inability to identify the entire target population. It is not clear from the text that all Vietnam and Vietnam-era veterans fitting the inclusion criteria of the sample were identified and asked to participate in the study. If the entire target population was not requested to participate, the results would not be representative of the membership of the American Legion, nor the Vietnam veteran population. For example, if those who responded were members worried about combat-related or Agent Orange exposure and their current health, the results would be biased.

Data collection methods: All data were collected using self-administered questionnaires. No verification of self-reported health effects was conducted. This issue is particularly a problem for interpretation of self-reported medical conditions and reproductive events and, therefore, is discussed in the review of "Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam."

Participation rate: The text does not state the exact response rate for each state. The report indicates that participation ranged from 52.5 percent to 64.1 percent, suggesting that participation of those contacted was low.

The method for assessing response bias appears reasonable for description of the respondents, but it is also important to determine the characteristics of the nonrespondents and whether or not the nonrespondents were similar in health and exposure parameters to those who participated. A characterization of non-respondents was not discussed.

Exposure assessment: The authors state that they "provide an analysis of patterns of exposure of American Legionnaires to various levels of . . . herbicides". Actually, they utilize their 1986 exposure indices which calculate proximity (within 15 km) between the location self-reported by the participants to the location of herbicide sprays obtained from the Air Force HERBS tapes and related documents.

Unfortunately, the authors failed to discuss the validation study conducted by the CDC to test the adequacy of a similar exposure system based upon the HERBS tapes, even though they were aware of the study. The validation study, required by the Office of Technology Assessment of the Congress, demonstrated conclusively that there was no association between the exposure levels predicted by the proximity of geographic location of troops with location of herbicides sprays as documented on the Air Force HERBS tapes. It is standard procedure for researchers to point out how their methods and results compare with others. The failure of the authors to explain why they consider their method to be valid in light of the demonstration of the CDC that a similar effort was proven incorrect leads to a worrisome concern about lack of objectivity in conducting the research or writing the paper. We would have preferred to see the authors propose that their system be tested in a similar fashion. Instead, they conclude that they have provided "a readily used and inexpensive exposure classification system", even though they have not tested its accuracy in any way nor have they pointed out the clear failure of a very similar system designed with at least equivalent care and effort by the CDC.

SOCIAL AND BEHAVIORAL CONSEQUENCES OF THE VIETNAM EXPERIENCE AMONG AMERICAN LEGIONNAIRES

Stellman JM, Stellman SD, Sommer JF, Environmental Research 47:129-149 (1988)

This paper reviewed demographics, smoking and alcohol consumption patterns and social and behavioral parameters among the studied sample of Legionnaires.

Demographic characteristics and personal habits: The study population was composed of all males and was 98.5 percent white. This is in contrast to the Army veterans studied by CDC who were 83.2 percent white males. Among the Legionnaires, there was no difference in the level of education achieved between Vietnam and non-Vietnam veterans. When comparing the Legionnaire data to the CDC cohort, 6.3 percent of the Vietnam veterans and 5.5 percent of the non-Vietnam veterans achieved less than a high school education while in the CDC cohort, 14.1 percent of the Vietnam veterans and 11.6 percent of the non-Vietnam veterans did not graduate from high school. These data suggest that the Legionnaires tend to be more highly educated than other groups of veterans.

Social and behavioral functioning: The report concluded that social and behavioral functioning, such as sexual satisfaction and marital stability, diminish with increasing exposure to combat. The arguments are presented clearly. Unfortunately, some factors which may predispose individuals to increasing combat level and the outcomes under study, e.g., personality characteristics developed prior to service, are not fully studied. The Card (1980) study claims that the men who served in Vietnam were "comparable to their peers who did not . . . (serve in Vietnam)," but it seems likely that unmeasured (and perhaps often unmeasurable) factors might lead to "increased combat exposure," and "social dysfunctioning."

Likelihood of exposure to Agent Orange was "statistically associated" with two behavioral outcomes, anxiety and physical depression. However, when "exposure to combat" was added to the model, these associations were not statistically significant. The authors conclude that the effects of herbicides on psychosocial well-being should be studied only with "exposure to combat" as a potential confounder. It is our opinion, that based on the results of the CDC serum 2,3,7,8-TCDD validation study, there is little evidence of exposure for the majority of the veterans stationed in Vietnam. Since the results of the CDC study were available to the researchers, it is surprising that their discussion include a recognition of this information. The results of this study implicate combat intensity as a contributor to increased social dysfunctioning.

HEALTH AND REPRODUCTIVE OUTCOMES AMONG AMERICAN LEGIONNAIRES IN RELATION TO COMBAT AND HERBICIDE EXPOSURE IN VIETNAM

Stellman S, Stellman JM, Sommer JF., Environmental Research 47:150-174 (1988)

A. HEALTH EFFECTS OTHER THAN REPRODUCTIVE

The study found generally negative results for most self-reported conditions which the authors describe as endpoints of exposure to phenoxy herbicides or TCDD.

Interpretation of the few statistically significant excess risks among veterans stationed in Vietnam compared to non-Vietnam veterans is severely limited due to possible selection biases. The limitations of the health data are as follows:

(1) Questionnaire construction: Many of the outcomes collected in the questionnaire are confined to broad classifications of diseases e.g., heart disease, genito-urinary problems or nervous system disease, rather than specific conditions. Information on specific conditions was not solicited. Collection only of broad classes of conditions is not appropriate because the relevant literature does not associate every disease within a broad classification with exposure to phenoxy herbicides. A better method would have been to collect the names of the specific conditions and then combined related effects in the analysis. In addition, some of the questions ask for past occurrences of unrelated conditions, which may lead to erroneous conclusions. For example, the article defines sebaceous cysts as an example of benign fatty tumors. Sebaceous cysts have been described in workers diagnosed with chloracne, however, according to our consulting dermatologist, sebaceous cysts are quite rare and they are not considered to be benign fatty tumors. Therefore, the excess of benign fatty tumors described among Vietnam veterans with "the potential for high Agent Orange exposure" may be an artifact of incorrect question construction.

(2) Risk Factors: An extremely important omission in the text is the lack of discussion about which confounders or other risk factors were included in the assessment of the reported conditions. For example, the risk for heart disease was adjusted for age, but there is no mention that the analysis was adjusted for smoking, high blood pressure, obesity or other factors which are well-known risk factors for many types of heart disease. Information on smoking and current weight and height was collected in the questionnaire and could have easily been introduced into the analysis.

Several skin conditions were also reported in excess among Vietnam veterans compared to non-Vietnam veterans. These conditions may also be related to exogenous or endogenous factors including medications, allergies, chemical exposures, none of which were quantified or controlled for in this study.

(3) Confirmation of self-reported conditions and symptoms: All of the information collected on each health outcome and symptom was self-reported in a mailed questionnaire. None of the conditions were confirmed by examination of records documenting such events. Although validation of self-reported events is an arduous task, it is necessary to assess and control for the possibility of recall and reporting biases in the study groups. Previous studies have documented that individuals with a disease of interest or with exposure to a substance under investigation, have heightened recall of events compared to controls without the disease or the exposure. For example, the four skin conditions asked about in the questionnaire were found to be statistically significantly elevated among Vietnam veterans. These conditions have been repeatedly reported in the scientific literature and popular press to be associated with exposure to dioxin-contaminated materials, particularly in exposed occupational populations. This coverage could have influenced the responses of the subjects.

Reporting bias may also be a problem if there is not a consensus on the interpretation of each question by the targeted responders. Short of employing training interviewers to administer the questionnaires, review of clinical records would help to confirm the diagnosis of the self-reported events. Without any type of confirmatory data, it is not possible to rule out the possibility that positive findings are the result of reporting and recall bias.

(4) Another major concern regarding this study is the lack of documentation of other exposures, particularly occupational, which are related to the health outcomes of interest and which may have occurred during the 20 years between the veteran's tour in Vietnam and his participation in the study. Many other chemicals and physical agents cause health effects which are also associated with exposure to dioxin-contaminated materials. The omission of this information is a serious flaw in the design of the study.

(5) There are many statistical tests conducted on this data set. However, there was no mention that corrections were made to correct for the multiple comparisons problem.

Summary: The health effects reported in this paper are generally negative, although some conditions were reported in excess among Vietnam veterans. The quality of the self-reported data are suspect because they were not confirmed with more objective data, such as information from medical care providers. Outcomes found in excess among Vietnam veterans compared to non-Vietnam veterans must be interpreted cautiously due to the absence from the models of risk factors other than the exposure and combat indices.

B. REPRODUCTIVE OUTCOMES

In the reproductive component of the study, there is not sufficient detail in the report to permit us to draw meaningful conclusions regarding reproductive effects. The descriptions of the study methods and the analytic techniques omit critical details. These are enumerated below:

(1) The response rate was apparently quite low. Of the 12,588 Vietnam veterans mailed a questionnaire (Stellman preliminary report) only 6,810 (54 percent) responded.

(2) The study population for the reproductive outcome analysis is not well described. In Table 9, a total of 3,372 men are reported to have had or tried to have children. In "the Delay in Fathering" analysis, 3,078 men were included in the analysis. This was 294 fewer men, presumably because 294 men had fathered a pregnancy prior to Vietnam service. In the miscarriage analysis, 2,950 men were analysed. This number is 128 fewer than the number given for the Delay in Fathering Analysis but no explanation is given for the difference.

(3) There is some concern about the validity of the outcome data for three reasons. (1) The data on the outcomes of pregnancies were obtained from men, not the women. Other studies have shown men to be poor informants regarding their wives' pregnancy outcomes. (2) The data were obtained by a mailed questionnaire, which is less detailed or complete than other administered questionnaires. (3) The pregnancy outcome responses were not validated with medical records, so the potential for differential recall cannot be evaluated.

(4) All pregnancies were included in the analysis. Inclusion of all pregnancies can lead to a biased estimate since the pregnancies of an individual woman are not independent events. In the analytic technique used, a single women could have contributed many miscarriages to the data set. The authors do not discuss this issue and did not attempt to control for this factor in the analysis.

(5) Factors such as parity and prior spontaneous abortion are important risk factors for spontaneous abortion. However, these factors were not considered in the analysis.

(6) It appears from the questionnaire that date of the pregnancy and date of Vietnam service were available for consideration in the analysis. An analysis of miscarriage by time since Vietnam service would have been useful in interpreting the findings.

(7) The question used to determine whether the veterans had difficulty having children was phrased rather vaguely "Have you ever experienced difficulty in having children?" A more objective definition such as "Did you ever try to have a child for at least one year but were unable to?" would have been more likely to be interpreted uniformly by respondents.

Summary: Given the limitation in the data collection and analyses, at this time, it is difficult to agree with the authors' conclusions that miscarriages showed a dose-related risk with Agent Orange exposure.

Post-traumatic stress disorder among American Legionnaires in relation to combat experience in Vietnam: associated and contributing factors. Snow BR, Stellman JM, Stellman SD, Sommer JF. Environmental Research 47: 175-192 (1988).

Of the four papers in the series, this one has the best organization and clearest presentation; the hypotheses and objectives of the analyses were stated clearly, and the results were to the point. The authors state that the instruments used to assess post-traumatic stress syndrome (PRSD) included a list of symptoms from the DSM/III and a combat scale, which had been validated in previous studies. The data indicate the individuals with exposure to eight or more combat events report more of the symptoms consistent with PTSD and that a higher combat score is directly related to higher PTSD intensity scores. According to one definition of PTSD, the percent of participants in this study reporting symptoms consistent with a diagnosis of PTSD (15 percent) was similar to the percent of Army veterans in the CDC study who had met the diagnostic criteria for PTSD at some time during or after service (15 percent).

Summary: This article shows that some veterans in this sample demonstrate symptoms which are consistent with PTSD. Although the authors state that the subjects were a "random sample" of Legionnaires, the first paper in the series points out the volunteer nature of the participation. Therefore, it is not possible to know whether or not the nonrespondents experience the same pattern of symptoms as respondents.

EDITORIAL: NEW LIGHT ON THE HEALTH OF VIETNAM VETERANS

By Michael Gochfeld

Although this editorial may have been written prior to the 1988 JAMA publication of the results of the CDC validation study, the MMWR carried the information in 1987, and the data were presented in October 1987 at the Seventh International Symposium on Dioxin in Las Vegas. Dr. Gochfeld omits a description of the CDC study, although he clearly supports the concept that "measurement of TCDD levels in blood is a feasible biologic marker of past exposure to dioxin . . ." and that ". . . such a surrogate may be utilized as an index of exposure

. . .". It is our opinion that the CDC validation study clearly demonstrated that there was not substantial exposure to Agent Orange among the ground troops in Vietnam. Failure to compare the two exposure systems in the editorial leaves the reader without a critical evaluation of them.

Dr. Gochfeld refers to the conclusion (drawn justifiably, in our opinion) to cancel the CDC study of Agent Orange-exposed veterans and he agrees that the CDC validation study had demonstrated that "only a minority of veterans had appreciable herbicide exposure". That validation study also demonstrated that the HERBS tapes failed to predict exposure levels which correlated with levels of dioxin in veterans. Consequently, we disagree with Dr. Gochfeld's statement that the present paper explains how to avoid the misclassification of exposure in prior studies. We suggest that the authors follow the CDC example and test their exposure-system by evaluation of dioxin levels in a sample of veterans identified as having high, medium, and low levels of exposure to Agent Orange. Until they have demonstrated that their system is accurate, it should be assumed to have the same flaws as the system ultimately rejected by CDC.

The editorial also misses the opportunity to explain the epidemiologic pitfalls of the study, including selection and reporting biases and non-representativeness of the sample. This would have been a perfect chance to educate the interested public in the problems associated with cross-sectional studies. However, the author does point out of the limitations of reconstructed exposure histories and the inherent biases of exposure misclassification.

With regard to health effects, the author suggests that the "health effects data actually confirm some fears" but he does not explain that the report reflects the opinions of the sampled veterans about their health because there was no confirmation of the accumulated data, and, therefore, the results of the study must be interpreted cautiously.

VETERANS' ADMINISTRATION,
Washington, DC, December 30, 1988.

Dr. VERNON N. HOUK, M.D.,
Director, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: As requested, enclosed are comments prepared by myself and Dr. Han K. Kang on the recently completed American Legion studies.

If you have any questions regarding our comments prior to the January 10, 1989, meeting of the Agent Orange Working Group Science Panel please feel free to call me at FTS 373-3064/4117. Dr. Kang can be reached at (202) 634-4600.

Sincerely,

LAWRENCE B. HOBSON, M.D.,
Director, Environmental Medicine Office.

AMERICAN LEGION STUDIES ON HEALTH OF VIETNAM VETERANS

1. The studies by Stellman and Stellman for the American Legion have produced a paper on methodology (AM. J. Industr. Med. 9:305-321. 1986) and a series of five papers on results (Envir. Research. 47:112-209. 1988). The latter series also contains an editorial by Gochfeld.

2. The entire effort depended on self-reporting by 6,810 American Legion members who are Vietnam era veterans and 2,860 of whom served in "Southeast Asia." Each subject received a questionnaire asking about his service in Vietnam, medical and psychological status, reproductive history, socioeconomic factors, and attitude toward the Veterans Administration. The questionnaire required some one and a half hours to complete and the American Legion assigned a "volunteer researcher" to each subject to ensure a high compliance rate. The investigators believe, but without evidence, that this did not influence responses to the questions.

3. Copies of the questionnaire have not been supplied on request, but some details are mentioned in the papers. The form asked whether a doctor had informed the veteran that he had one or more of 23 diseases (not listed in the paper) and also 28 "health conditions currently a problem" (also unlisted). In addition, specific questions were asked about acne, skin rash with blisters, changes in skin color, and a part of the body becoming more sensitive to light. These are said to have been "questionnaire derived."

4. Exposure to Agent Orange was calculated by a somewhat complex formula that depended on the veteran's locating himself in Vietnam. To do so he was given a list of at least 98 place names with a map and asked at which and on what dates he served there. Information from the HERBS tapes was used to locate spraying. The evaluation method is essentially the same as that tried and discarded by the AOWG Science Panel, Office of Technology Assessment, the VA, and the Centers for Disease Control. It has numerous serious defects and now has been shown to be useless by the finding of no exposure among ground troops by blood assays for 2,3,7,8-TCDD even for such veterans whose supposed contact with Agent Orange was calculated to be great.

5. Combat experience was judged by response to eight questions. No attempt was made to validate the answers by comparing with military records, i.e. assignment to companies, correlation with company records of location, military specialties, and special duties.

6. Results, especially physical and mental health, are reported in a confusing fashion, especially in respect to a causal relation distinguishing between Agent Orange exposure and combat stress. Thus heart disease is sometimes included among the effects of Agent Orange and at other times is specifically excluded. In most places, the health effects of herbicides are given as four: skin rash with blisters; adult acne; increased sensitivity to light, and benign fatty tumors. The latter are reported as including sebaceous cysts, not properly so considered. Veterans who had actually handled herbicides were said to have had more cases of hypertension and gastric or intestinal ulcers. Wives of veterans who were said to be exposed to Agent Orange were reported to have had greater risk of miscarriages.

7. Truly serious physical diseases, such as epilepsy, ulcerative colitis, and Addison's disease, had too few occurrences to be correlated and some, such as kidney disease and diabetes, occurred uniformly in various groups. Other medical conditions were said to be related to service in "Southeast Asia," e.g., heart disease, without ascription to a specific cause.

8. Combat stress was found to be dose-related to hypertension, ulcers, fatty tumors, arthritis, G-U problems, and major accidents. There was also an increasing prevalence of post traumatic stress disorder with an increasing level of combat, as judged from the questionnaires. Among 28 percent of veterans with higher combat stress, 15 percent reported PTSD according to the definition used.

9. Questions about relationships with the VA where biased in several instances, e.g. "I have been fully informed about the availability of an Agent Orange examination at the VA." Results included a lower level of knowledge about the VA and more negative attitudes toward the VA among veterans who had never used the VA. Emphasis was given to the failure of VA facilities to ask questions relevant to PTSD and about combat experiences.

10. The questionnaire survey was completed in 1984. No mention is made of Vet Centers, nor of the VA registry, of recent research, of late Air Force reports on Ranch Hand studies. The CDC blood level experience is completely ignored.

11. In view of the technical flaws, of the lack of reference to recent research, and the trivial nature of the health effects attributed to exposure to Agent Orange, the Stellmans' reports hardly justify the statement that the findings are of major importance or indicate serious health defects resulting from exposure to Agent Orange.

A REVIEW OF THE AMERICAN LEGION STUDIES PUBLISHED IN ENVIRONMENTAL RESEARCH

I. EDITORIAL: NEW LIGHT ON THE HEALTH OF VIETNAM VETERANS

The editorial points out "only a minority of veterans had appreciable herbicide exposure." No one seems to disagree on this point. The question that everyone is struggling with is how to identify them within the limits of resources and time. The Stellman et al paper simply presents another way to classify Vietnam veterans based on military records without any evidence that their classification method is reliable. The CDC validation study demonstrated convincingly that military records alone are not a sufficient basis for the categorization of Vietnam veterans according to their probable Agent Orange exposure. The editorial did not mention the CDC study.

Dr. Grochfeld seems to favor the use of a surrogate measurement, TCDD levels in blood, as an index of the exposure and as a basis for analytical stratification. However, it is not conceivable to apply this invasive, costly procedure to all of the 3 to 4.4 million veterans who served in Southeast Asia.

Granted this is an editorial, but some phrases are inflammatory and not substantiated. For example, "remarkably complacent responses" referring to the VA and the DOD, "a dearth of well designed studies" discussing scientific evidence, "arguing nihilistically" describing the CDC, "with much reluctance" and "of varying reliability" characterizing the VA Agent Orange Registry Program.

Contrary to the editorial, the VA has provided priority medical care to all Vietnam veterans under PL 97-92, 99-166 without regard to the veteran's age, service-connected status or the veteran's ability to pay for the expense of such care. Almost all Vietnam veterans who may have been exposed to Agent Orange are eligible for medical care under this program except those veterans presenting the following types of conditions that are not ordinarily considered to be due to Agent Orange exposure: 1. congenital defects; 2. conditions which are known to have pre-existed military service; 3. conditions resulting from trauma; 4. conditions having a special and well established etiolo-

gy. This priority treatment program has been in existence for 6 years (not 2 years) and a total of 1.3 million outpatient visits and 25,000 inpatient treatments have been made under this program. These figures indicate that the eligibility requirement for medical care is not as stringent as the editorial suggested.

II. COMBAT AND HERBICIDE EXPOSURES IN VIETNAM AMONG A SAMPLE OF AMERICAN LEGIONNAIRES

This paper describes two critical methods for determining the likelihood of exposure to Agent Orange and the extent of combat experience based on military records or self-reported data. Analyses and interpretation of the subsequent four papers very much hinge on the validity and reliability of these methods. The paper fails to present any convincing evidence that both methods are valid and reliable. The fact that "a large proportion of men whose likelihood of herbicide exposure was either nil or low, while a sizeable number of individuals were classified as high exposure" is not by itself evidence that the method is valid. This may be a simple reflection that herbicides were not applied uniformly throughout South Vietnam. Furthermore, "that health-related effects to be presented in the successor paper of this paper often display a dose-response relationship with respect to herbicide exposure" may be resulting from selective recall of veterans who may have various health conditions. The results of the study would have been more convincing had there been some effort to validate questionnaire data against readily available military personnel records and medical records.

No reference or discussion was made concerning the CDC validation study which indicated no matter how one uses military records to classify exposure likelihood, classification based on military records is not supported by TCDD levels in blood.

Aside from the lack of validation, there is no evidence that an internal consistence in responses was carefully checked. There are some questions I would like to ask.

1. What is the definition of Vietnam Era in this study?

2. How many veterans selected for the study by the "volunteer researchers" were found not meeting the eligibility criteria after questionnaires were completed?

3. How many veterans served in Cambodia or Laos? What was their Agent Orange exposure classification? What were their stated health problems? To my knowledge HERB tape and Services HERB tape do not contain data on use of herbicide in Cambodia or Laos. Therefore, veterans who served in either country should have been classified as no or minimum exposure unless they handled herbicides.

4. One out of 10 veterans who served in non Southeast Asia were classified as having levels of combat ranging from 11 to 15. Were they mostly career type veterans whose military service dates included a period of other war? If not, can their stated combat exposure away from hostile enemy activities in Southeast Asia be explained?

III. SOCIAL AND BEHAVIORAL CONSEQUENCES OF THE VIETNAM EXPERIENCE AMONG AMERICAN LEGIONNAIRES

The entire report is based on questionnaire data without a single item being checked for accuracy or a systematic bias. How does one rule out the possibility of selective recall among those veterans experiencing social and behavioral problems? Although the effects of combat experience on social and behavioral outcomes are plausible, erroneous findings cannot be ruled out. When there is substantial difference in the marital status of these two groups (Vietnam and non-Vietnam veterans), family income rather than veterans' income may not be an appropriate measure of socio-economic status of veterans.

IV. HEALTH AND REPRODUCTIVE OUTCOME AMONG LEGIONNAIRES IN RELATION TO COMBAT AND HERBICIDE EXPOSURE IN VIETNAM

Lack of any attempt to validate data on both outcome variables and independent variables is again of major concern in the report. Notwithstanding this concern, the observation that only one medical condition (benign fatty tumors) was associated with Agent Orange exposure provides a sense of relief. With respect to reproductive outcomes, it should be noted that male veterans were asked family reproductive histories rather than their wives. On page 152, the Hoffman et al. (1986) paper was cited for "statistically significant differences in immune system response". It should be noted, however, that in a later year the authors reported the failure to confirm depressed delayed-type hypersensitivity skin test reactions in the TCDD-exposed cohort. (Dioxins 87, October, 1987).

V. POST-TRAUMATIC STRESS DISORDER AMONG AMERICAN LEGIONNAIRES IN RELATION TO COMBAT EXPERIENCE IN VIETNAM: ASSOCIATION AND CONTRIBUTING FACTORS

The existence and elevated rate of PTSD among Vietnam veterans are certainly plausible but the lack of validation of combat experience makes the finding less convincing. It should be noted that the prevalence of PTSD can range from 1.8 percent to 15.0 percent depending on the definition of evidence of exposure to a traumatic event.

VI. UTILIZATION, ATTITUDES, AND EXPERIENCES OF VIETNAM ERA VETERANS WITH VETERANS ADMINISTRATION HEALTH FACILITIES: THE AMERICAN LEGION EXPERIENCE

There seems to be a gross misconception of the role of the VA in providing medical care to veterans. The VA under the law provides medical care (both in patient and outpatient) primarily to veterans with service connected health problems. If beds are available services are provided to other veterans. In other words, the VA is not authorized to provide free medical care to all veterans.

Several questions were asked which would likely generate negative responses. For example, (1) the lifetime health benefits of the VA were a strong incentive to me to join the service; (2) in an emergency situation I would prefer to go to a VA facility than to a community hospital; (3) the VA system is a good, secure alternative for me for health care needs in the future; and (4) the VA system provides security and peace of mind to most Vietnam era veterans.

Some questions were phrased in such a way that answers would be almost always "not true". Examples are (1) I am fully aware of all the benefits . . .; (2) I am very knowledgeable . . .; (3) I am aware of the workings of the . . .; and (4) I have been fully informed about the availability of . . . One question seems to ask other veterans' perceptions rather than the respondent's, i.e. most Vietnam veterans feel very positive about the VA. It is encouraging that the majority of those who used the VA have expressed a great deal of satisfaction toward their experience.

In conclusion, I do not find much fault in the mechanical handling of data that has been collected. Statistical tests seem appropriate and interpretation seems reasonable. However, they fail in one crucial area: no attempt was made to validate any of the data items they collected. If one starts out with invalid data, no amount of statistical manipulation will make it right.

HAN K. KANG, DR. P.H.,
Veterans' Administration,
Office of Environmental Epidemiology.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
December 23, 1988.

From: John F. Young, Ph.D., Dirctor, Division of Reproductive and Developmental Toxicology.

Subject: Review of articles from Environmental Research (47:112-209,1988) by Stellman et al.

To Dr. Vernon Houk, Chairman, AOWG Science Panel.

Overall Impression: A large study involving a lot of work which was fairly well done! The strong correlation between combat and Agent Orange (AO) exposures is not unexpected data to the way the study was conducted (self-reporting questionnaire); additionally, any correlation with combat status will also correlate with Agent Orange exposure. However, in light of the recently published CDC's TCDD serum data of Vietnam veterans (JAMA 260:1249-1254, 1988) which used similar procedures to identify the potentially highest AO exposure troops (including self-reporting) and which indicated that actual AO exposure probably did not occur to any appreciable extent in any of the ground troops, the findings by Stellman et al. in relation to AO exposure has less significance.

The combat scale is inconsistent among the five papers. Why?

Paper 1—Fig. 4 & 6 -> 3 levels of low, medium, and high. Table 3 -> 5 levels of numerical scores. Fig. 5 -> levels of lowest, low, medium, high, and highest.

Paper 2—3 levels used throughout this paper.

Paper 3—3 levels in Tables 4 and 5.

Paper 4—3 categories different from all other papers -> median, 1 or more events, and all 8 events.

Paper 5—Fig. 1,2,3, and Table 6-5 levels. Fig. 4-2 levels of average or less and above average.

Specifics:

PAPER 1: COMBAT AND HERBICIDE EXPOSURES IN VIETNAM AMONG A SAMPLE OF AMERICAN LEGIONNAIRES

Environ Res 47: 112-128, 1988

(1) Fig. 2.—Are the Orange and White labels reversed? It would appear to be reversed if Figure 1 is correct with the usage amount of AO about twice that of Agent White.

(2) Table 2.—How were the 95 percent confidence intervals calculated? According to the text (page 120, 2nd paragraph), the herbicide exposure index OE3 mean was 0.357 with a standard deviation of 0.752 which would translate into a 95 percent CI (+/− 2 SD) of 0-1.861. However, the table was a 95 percent CI of 0.32-0.39. I wonder about the rest that cannot be checked.

(3) The combat ranking scale varied from Table to Table or Figure; e.g., Table 3 has 5 levels of combat scores, Figure 5 has 5 levels of lowest, low, medium, high, and highest, and Figure 6 has 3 levels of low, medium, and high. How do these various rating scales

interrelate? Is the "lowest" in Figure 5 the same as the score of 8-10 in Table 3? Is the "low" in Figure 6 the same as the "low" in Figure 5 or is it equivalent to the "low + lowest" in Figure 5?

(4) In a paper describing a procedure of picking cohorts, it would be of interest to see the responder characteristics between the Vietnam veteran and the non-Vietnam veteran (the two comparison groups). Instead the authors chose to present the responses between two States (Table 4). Isn't this trivial information that skirts the main issue of comparison?

(5) In general it would have been informative if the authors had presented the actual logistical information of total number of members of the 6 American Legion state organizations, number of postcards sent out and returned, number of questionnaires sent out and returned, and complete demographic information on the two cohorts.

PAPER 2: SOCIAL AND BEHAVIORAL CONSEQUENCES OF THE VIETNAM EXPERIENCE AMONG AMERICAN LEGIONNAIRES

Environ Res 47:129-149, 1988

(1) The authors stated that education was predictive of income (p. 134, last paragraph) and that income was inversely related to combat level (Fig. 1). Is there any information from the available literature that would indicate that lower educated troops were more often used in the more intense combat areas? Does the "pre-Vietnam" educational level also correlate inversely with combat level?

(2) I doubt the significance of the data in Table 3. I find it hard to believe that a mean income difference of −$3000 will be statistically significant (Table 3) or that the bars in Fig. 1 are really the 95 percent CI. If we take the data from Fig. 1 for "Not SEA", the 95 percent CI would include incomes of between $20,000 and $21,000; using Table 2, 95 percent of the "Served elsewhere" group would have an upper income of $21,000 and a lower income of $20,000. Therefore only about half of the graduate/professional school group would be earning over $21,000 and only half of the group with less than a high school education are earning less than $20,000. I don't believe this is reasonable. It may be a minor point, but what does it mean in relation to the rest of the numbers that are presented as means and 95 percent CI that cannot be checked.

(3) The authors also state in regards to this same data that "These findings demonstrate that significant family income loss has, on the average, occurred among Vietnam combat veterans, irrespective of their degree of educational attainment." (p. 135, first sentence of last paragraph). They do not present the data to substantiate this statement.

(4) Table 4.—How do they calculate the odds ratios? I don't understand how they can calculate a "p" value from count data. What is used for the variance? It would have been helpful if the authors had chosen to present their statistical treatment procedures.

(5) On page 148, first paragraph, the authors state that ". . . there is an over-representation, by design, of men with combat zone experience, . . .". What is this based on and how was it done? There are more non-SEA persons than Vietnam veterans in the total study, there are more persons in the low combat category than the high, and the level of combat experience was only obtained after the questionnaire was returned. Therefore how or what was done "by design".

PAPER 3: HEALTH AND REPRODUCTIVE OUTCOMES AMONG AMERICAN LEGIONNAIRES IN RELATION TO COMBAT AND HERBICIDE EXPOSURE IN VIETNAM

Environ Res 47:150-174, 1988

(1) In the other 4 papers in this series, the measured parameter of interest is correlated to combat level and then to Agent Orange. In most cases the effect of AO is minimal due to the strong correlation that was obtained between combat and AO. Therefore the culprit was "combat" that caused all of the problems. However, in this paper the authors have reversed the order of regression with AO being the primary culprit and combat taking the secondary role. Why have they taken this approach and changed their mode of statistical evaluations?

(2) Table 1.—It is interesting to note that in every instance, the Vietnam veteran had a higher incidence of the disease or condition. Might not this indicate that the Non-SEA person was less likely to report a malady than the Vietnam veteran? Why was cancer (especially Non-Hodgkin's lymphoma or soft-tissue sarcomas) not included on the list of medically diagnosed diseases? That is the area that has received the most press for a number of years.

(3) On page 162, the authors explain that birth defects data is not included because it is necessary to have medical verification for such findings. Why is verification of the other medical diagnosis not necessary?

(4) Page 166, 2nd paragraph: Where is the data to support the authors' statement "Mean levels of Agent Orange exposure were always significantly higher in pregnancies which ended in miscarriage, compared to those that ended in live births, . . .".

(5) There is a general lack of a real discussion section in this paper. The literature is discussed but the "data" presented in this paper is not discussed.

PAPER 4: POST-TRAUMATIC STRESS DISORDER AMONG AMERICAN LEGIONNAIRES IN RELATION TO COMBAT EXPERIENCE IN VIETNAM: ASSOCIATED AND CONTRIBUTING FACTORS

Environ Res 47:175-172, 1988

(1) Page 190, 2nd paragraph: The authors state that PTSD-like symptoms were found in veterans not considered to be exposed to heavy combat, yet no data was presented to compare the Vietnam veteran to the "no combat" Non-SEA group. The data was apparently available to make such a comparison.

(2) AO is not discussed in this or the final paper, even as a potential interaction element, as was done in the first two papers. I wonder why?

PAPER 5: UTILIZATION, ATTITUDES, AND EXPERIENCES OF VIETNAM ERA VETERANS WITH VETERANS ADMINISTRATION HEALTH FACILITIES: THE AMERICAN LEGION EXPERIENCE

Environ Res 47:193-209, 1988

(1) I didn't find anything really surprising in this paper other than there was no comparison to the AO exposure level.

EDITORIAL: NEW LIGHT ON THE HEALTH OF VIETNAM VETERANS

Michael Gochfeld, Environ Res 47:109-111, 1988

The author indicates his bias very early in the editorial with the statement concerning the "remarkably complacent responses" of the DoD and VA. Later in the article he refers to the VA's role with terms such as "with much reluctance", "of varying reliability", and "the VA's inadequate role".

He also makes a much bigger point of the role of AO in the statistical analyses of the 5 papers than is actually found in the data. Mr. Gochfeld does indicate the value of TCDD blood levels as a biomaraker for AO exposure, but does not follow through with the logical inclusion of a reference to the CDC work; perhaps a problem with timing. In light of the DC JAMA article, I do not agree with Mr. Gochfeld or the Stellman et al. articles that "categorization of Vietnam veterans according to herbicide exposure can be successfully accomplished".

Unfortunately, the editorial put too little emphasis on the main issue of combat level related issues in the obvious desire to over implicate the weaker role of Agent Orange exposure.

THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Mr. DIXON. Mr. President, in the near future the President will announce the results of the "management study" which he commissioned during his State of the Union Address. This study is to provide an overall review of the Defense Department's management structure and procurement practices, and initiate steps to bring the Department into full compliance with the recommendations of the "Packard Commission." I look forward to the conclusions and recommendations that the President and Defense Secretary Cheney will make.

Mr. President, since coming to the Senate in 1981 I have been personally involved in the Senate's review of and legislative initiatives in the area of defense procurement policy. In fact, I offered the first legislative proposal in the Congress to create the position of the Under Secretary of Defense for Acquisition—a position that Congress enacted in July 1986 and refined in subsequent legislative provisions. As a member of the Senate Armed Services Committee, I have been a student of the background and intent behind the Packard Commission recommendations, and a strong supporter of those very important guidelines.

When I introduced the first legislation to create the Office of the Under Secretary of Defense for Acquisition, I had one principal purpose in mind—to create a senior level official in the Department of Defense who would be the child policymaker for defense acquisition, and who would have the oversight authority for the Pentagon's weapons systems purchases. The position was to be the designated "czar" of all phases of defense procurement. Regrettably, I must report that, despite my efforts and those of my colleagues in the Congress, our goal has never been achieved.

Our congressional hopes and aspirations for the successful implementation of this critical position will have no future if this entire enterprise is not moved off dead center. Because that initiative appears fuzzy at the administration's end of this undertaking,

it appears that the task may once again be left to Congress.

Since the Packard Commission issued its report in June 1986 there has been a followup report which Mr. Packard personally conducted for President Reagan, and dozens of studies and analyses of the status of the recommendations. I remember vividly the testimony of former Deputy Secretary Taft—proudly announcing that the department had fully implemented all of the Packard Commission's recommendations. We now have the Department acknowledging that not all of the recommendations have been implemented, and more work needs to be done. This unfinished agenda has been confirmed by the General Accounting Office and several followup congressional hearings on both sides of the Capitol.

The law and legislative history, as well as the DOD implementing directive, make it clear that the Under Secretary of Defense for Acquisition is the primary Department of Defense official for procurement matters. It is that simple, Mr. President. I can not for the life of me understand why it is proving so difficult, so impossible, to get this show on the road. The statute relating to the duties of the Under Secretary of Defense for Acquisition provides for four functions for this job:

First, supervising all Department of Defense acquisitions;

Second, establishing policies for all phases of acquisition for all of the Department of Defense;

Third, establishing policies for the defense industrial base; and

Fourth, providing authority to direct the service secretaries of the military departments in all matters for which the Under Secretary has responsibility provided for by law or by direction of the Secretary of Defense. The law also specifically provides that, with respect to all matters for which the Under Secretary for Acquisition has responsibility, the person holding that position "takes precedence in the Department of Defense" After the Secretary and the Deputy Secretary.

The authority could not be stated any more clearly. Yet both of the men who held that position during the Reagan administration complained that they were hampered in carrying out their assigned statutory responsibilities. Suffice it to say, the failures do not stem from any ambiguity in the law or the Department's written directives.

I discussed the roles and responsibilities of the Under Secretary for Acquisitions with Secretary Cheney during his confirmation hearing. I probed this issue again with Don Atwood, the Deputy Secretary of Defense, when the Senate Armed Service Committee held his confirmation hearing. Atwood talked openly and candidly on the record about the role of the Under Secretary for acquisition, and the relationship which that individual should have with him and Secretary Cheney. Despite some early misinterpretations of his position, Secretary Atwood put his thoughts in writing to the Senate Armed Services Committee on the role of that post to the Department's senior leadership. I ask unanimous consent that the text of Mr. Atwood's letter be incorporated in the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DIXON. Mr. President, we are awaiting the nomination of the first Under Secretary for Acquisition chosen by the Bush-Cheney administration. From the press reports concerning the search process, it appears that well over two dozen people have apparently declined the opportunity to serve in this important post, for a variety of reasons. I hope that a candidate will be nominated in the near future.

Mr. President, in the last Congress, I introduced S. 2621, which would have enhanced the statutory authority of the Under Secretary of Defense for acquisition. I had considered reintroducing that legislation, with changes, today. However, given the forthcoming management study intended to provide further guidance concerning the roles and responsibilities of the Under Secretary for Acquisitions within the Department of Defense, I have decided to withhold introducing my legislative proposal for the time being. However, I ask unanimous consent that the text of my proposed legislation appear at the end of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 2.)

Mr. DIXON. I will be watching both the words, and the deeds, of the President and of the Department of Defense when the management study is released. I am willing to wait for the confirmation process of a new Under Secretary of Defense for Acquisition, and the opportunity to question the candidate on his or her background, vision for this critical position, and assurances that have been received regarding the role of the position in the scheme of things at the Pentagon, and the interpretation of the authority and responsibility for the position within the Office of the Secretary of Defense and the service secretaries.

This position is too important to be left vacant or cut adrift at the start of the new administration. This Senator will be waiting and watching the Department's actions. To be prefectly candid, deeds thus far have not come close to matching up with the words coming from the Pentagon. Congress knows what it wants. It is now time for the Department of Defense to comply with those wants. Our citizens expect a dollar's worth of value for their defense dollar. They have not been getting that result, and the acceptance by the Department of Defense of the strategic importance of that position has to come if the taxpayers are to get their due. Compliance with the intent of Congress can come easy or it can come hard—but, Mr. President, it is going to come.

EXHIBIT 1

APRIL 10, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: During last Wednesday's hearing on my nomination to be Deputy Secretary of Defense, I was asked to expand upon my written response to your pre-hearing Question 9, regarding the relationships among the Under Secretary of Defense for Acquisition (USD(A)), the Deputy Secretary of Defense, the Services Secretaries and the Service Acquisition Executives.

The legislative history of the statute that created the USD(A) position, and the subsequent hearings conducted by the Senate Armed Services Committee relating to the Department's implementation of the statute, provide clear statements of Congressional intent on the relationship between the USD(A) and the other Departmental officials identified in Question 9. The USD(A) is responsible for the supervision and direction of the Department's acquisition system, subject to the Secretary's authority, direction, and control. He is responsible for the formulation of policy regarding the full range of matters encompassed within the Department's acquisition system. It is expected that his policy decisions will be implemented by the Secretaries in the Military Departments and their Service Acquisition Executives.

It is clear to me from the Senate Report accompanying the legislation that created the USD(A) position (Senate Report 100-331) that, since the USD(A) will be held accountable for supervising the entire acquisition system, it is essential that he be empowered to enforce compliance with Defense-wide policies. In this regard, in the exceptional case where it may become necessary for the Under Secretary to issue a direction in an individual case, he has that power as provided by law. The Under Secretary will normally participate in or make programmatic decisions at relatively major programmatic decision points. To the extent that these decisions may differ with the wishes of a Service Secretary or a Service Acquisition Executive, the statute makes clear that the decisions of the Under Secretary will prevail in his area of responsibility. I believe that the DOD Directive specifying the responsibilities, functions, relationships, and authorities of the USD(A), revised following the Senate Armed Services Committee's September 22, 1987 hearing, seeks to embody this understanding.

With respect to relationships between the Deputy Secretary and the USD(A), the law is clear that the USD(A) is subject only to the authority, direction, and control of the Secretary of Defense. If the Deputy Secretary of Defense is to exercise supervision or exercise approval authority regarding acquisition policies, directives, or other decisions of the USD(A), it would be done only in the

capacity of acting for the Secretary under a delegation of the Secretary's authority.

The foregoing captures my understanding regarding the intent of the Congress regarding the relationships among the USD(A), and the Deputy Secretary of Defense, the Secretaries of the Military Department, and the Service Acquisition Executives.

Sincerely,

DONALD J. ATWOOD.

EXHIBIT 2

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Department of Defense Procurement Improvements Act of 1989".

SEC. 2. EXPANSION OF RESPONSIBILITIES OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION

(a) RESPONSIBILITIES.—Subsection (b) of section 133 of title 10, United States Code, is amended to read as follows:

"(b)(1) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition shall be responsible for the following:

"(A) The centralized procurement of all property and services for the Department of Defense.

"(B) The establishment and implementation of procurement policies for the Department and the approval of exceptions from the application of such policies in the case of any procurement.

"(C) All contract administration functions of the Department of Defense, including all functions relating to audit and oversight of contractor activities.

"(D) The supervision, direction, and control of all advocates for competition in the Department of Defense.

"(2) The Under Secretary may delegate his authority with respect to the procurement of any particular type or class of property or service to the senior procurement executive of a military department if the Under Secretary determines that the delegation of such authority will result in savings to the United States or is necessary to provide the property or service to the military department in a timely and efficient manner.".

(b) OTHER FUNCTIONS.—Section 133 of such title is further amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (g), respectively;

(2) by inserting after subsection (b), the following new subsection (c):

"(c) The following functions shall come under the Office of the Under Secretary of Defense for Acquisition:

"(1) All functions of the Department of Defense relating to the procurement of property and services.

"(2) All functions of the Defense Acquisition Regulatory Council and the Defense Logistics Agency.

"(3) All functions of the Office of Small and Disadvantaged Business Utilization of the Department of Defense (established under section 15(k) of the Small Business Act (15 U.S.C. 644(k)).".; and

(3) by inserting after subsection (e), as redesignated by clause (1), the following new subsection (f):

"(f) The Secretary of Defense, in consultation with the Under Secretary, shall appoint the senior procurement executive of each military department by and with the advice and consent of the Senate. Each senior procurement executive shall report directly to the Under Secretary.".

(c) CONSULTATION WITH INSPECTOR GENERAL.—Subsection (e) of such section, as redesignated by subsection (b)(1), is amended—

(1) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) In carrying out responsibilities relating to audit and oversight of contractor activities by the Department of Defense, the Under Secretary shall consult with the Inspector General of the Department of Defense."; and

(2) by redesignating paragraph (3) as paragraph (2).

(d) UNDER SECRETARY TO REPORT DIRECTLY TO SECRETARY.—Section 133 of such title is further amended by adding at the end the following new subsection:

"(h) The Under Secretary shall be subject only to the authority, direction, and control of the Secretary of Defense and shall report directly, without intervening review or approval, to the Secretary of Defense personally on all matters relating to the functions specified in subsections (b) and (c).".

SEC. 3. REVIEW AND APPROVAL OF CONTRACTS FOR FULL-SCALE DEVELOPMENT AND FOR PRODUCTION

(a) IN GENERAL.—Chapter 137 of such title 10, United States Code, is amended by adding at the end the following new section:

"§ 2331. Contracts for full-scale development and for production

"A contract for the full-scale development of a major system or for the procurement of a major system may not be entered into unless the Under Secretary of Defense for Acquisition has reviewed and approved the contract. In reviewing any proposed contract for procurement of a major system, the Under Secretary shall evaluate the plans and specifications for the system, determine the necessity for production, consider the commonality of parts and components of the system, and consider the complexity and practicality of the system.".

(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2331. Contracts for full-scale development and for production.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS

(a) CIVILIAN EMPLOYEES.—Section 1584 of such title is amended—

(1) by striking out "of a military department" and inserting in lieu thereof "of the Department of Defense"; and

(2) by striking out "the Secretary of that department" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(b) PROCUREMENT MANAGEMENT PERSONNEL.—Section 1621(1) of such title is amended by striking out "the Secretary of a military department" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(2) Section 1622 of such title is amended—

(A) in subsection (a)—

(i) by striking out "The Secretary of each military department" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition"; and

(ii) by striking out the last sentence; and

(B) in subsection (d), by striking out "the Secretary concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(3) Section 1623 of such title is amended—

(A) in subsection (a)—

(i) by striking out "The Secretary of each military department" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition".

(ii) by striking out the last sentence; and

(B) in subsection (c), by striking out "The Secretary concerned" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition".

(c) PROCUREMENT GENERALLY.—(1) Section 2302(1) of such title is amended by striking out ", the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force," and inserting in lieu thereof "(acting through the Under Secretary of Defense for Acquisition),".

(2) Section 2303(a) of such title is amended by striking out paragraphs (2), (3), and (4) and by redesignating clauses (5) and (6) as clauses (2) and (3), respectively.

(3) Section 2305(d) of such title is amended—

(A) in the first sentence of paragraph (1)(A), by striking out "The Secretary of Defense shall ensure that," and all that follows through the "head of an agency" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition, in preparing a solicitation for the award of a development contract for a major system, shall";

(B) in the second sentence of paragraph (1)(A), by striking out "head of an agency" and inserting in lieu thereof "Under Secretary"; and

(C) in the first sentence of paragraph (2)(A), by striking out "The Secretary of Defense shall ensure that," and all that follows through "the head of an agency" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition, in preparing a solicitation for the award of a production contract for a major system, shall".

(4) Section 2306(h) of such title is amended—

(A) in paragraph (2)(A), by inserting ", acting through the Under Secretary of Defense for Acquisition," after "Secretary of Defense"; and

(B) in paragraph (2)(D), by striking out "agencies in".

(5) Section 2311 of such title is amended by inserting "and subject to section 133(b)(2) of this title" after "Except as provided in section 2304(d)(2) of this title.

(6) Section 2318 of such title is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) All advocates for competition in the Department of Defense shall be under the supervision, direction, and control of the Under Secretary of Defense for Acquisition.

"(d) Each advocate for competition of a military department or a Defense Agency shall transmit to the Under Secretary of Defense for Acquisition a report describing the activities of the advocate during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Under Secretary.".

(7) Section 2324(h)(2) of such title is amended by striking out "or the Secretary of the military department concerned".

(8) Section 2327 of such title is amended in subsection (c)(2)—

(A) by striking out "Upon the request of the head of an agency, the Secretary of Defense" in the first sentence and inserting in lieu thereof "The Under Secretary of Defense for Acquisition"; and

(B) by striking out "Secretary of Defense" in the second sentence and inserting in lieu thereof "Under Secretary".

(9) 2329 of such title is amended—

(A) in subsection (b), by striking out "the Secretary of a military department" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition";

(B) in subsection (c)—

(i) by striking out "the Secretary concerned" each place it appears and inserting in lieu thereof "the Under Secretary of Defense for Acquisition"; and

(ii) by striking out the last sentence of paragraph (3) and inserting in lieu thereof the following: "The Under Secretary shall establish criteria for cases in which a percentage less than 50 percent may be specified.".

(d) RESEARCH AND DEVELOPMENT.—(1) Section 2352 of such title is amended by striking out "a military department" and inserting in lieu thereof "the Department of Defense".

(2) Section 2353 of such title is amended—

(A) in the first sentence of subsection (a)—

(i) by striking out "a military department" and inserting in lieu thereof "the Department of Defense"; and

(ii) by striking out "the Secretary of the military department concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition"; and

(B) in subsection (b)(3), by striking out "the Secretary concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(3) Section 2354 of such title is amended—

(A) in subsection (a), by striking out "the Secretary of the military department concerned, any contract of a military department" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition, any contract of the Department of Defense";

(B) in subsection (c)—

(i) by striking out "the Secretary of the department concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition"; and

(ii) by striking out "of his department"; and

(C) in subsection (d), by striking out "the Secretary concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(4) Section 2355 of such title is amended—

(A) by striking out "Secretary of each military department" and all that follows through "Comptroller General," and inserting in lieu thereof "Under Secretary of Defense for Acquisition, with the approval of the Comptroller General, may"; and

(B) by striking out "his department" and inserting in lieu thereof "the Department of Defense".

(5) Section 2356(a) of such title is amended to read as follows:

"(a) The Under Secretary of Defense for Acquisition may delegate any authority under section 1584, 2353 (except subsection (b)(3) of such section), 2354, 2355, or 2358 of this title to any employee of the Defense Logistics Agency.".

(6) Section 2357 of such title is amended by striking out "The Secretary of each military department" and inserting in lieu thereof "The Secretary of Defense".

(e) MISCELLANEOUS PROCUREMENT PROVISIONS.—(1) Section 2381 of such title is amended—

(A) in subsection (a)—

(i) by striking out "The Secretary of a military department" and inserting in lieu thereof "The Under Secretary of Defense for Acquisition"; and

(ii) by striking out "that department" in clause (1) and inserting in lieu thereof "the Department of Defense"; and

(B) in subsection (b), by striking out "the Secretary concerned" and inserting in lieu thereof "the Under Secretary of Defense for Acquisition".

(2) Section 2388 of such title is amended—

AN OPEN LETTER TO PRESIDENT GEORGE BUSH

Mr. HELMS. Mr. President, Sunday's Washington Post, June 18, contained the specious mouthings of someone identified as Charlotte R. Murphy who was protesting, among other things, the fact that there is widespread resentment to the American taxpayers' money being wasted on crude, blasphemous, and childish "works of art" by people to whom nothing is sacred.

I do not know Ms. Murphy and do not care to know her. The saints have been good to me in that regard. But what she needs to understand, and obviously does not, is that intellectual honesty is imperative in any rational discussion.

She claimed in her diatribe that she is "an adult working in the arts." She proclaimed that "Corcoran's chilling decision to drop the Robert Mapplethorp photographic exhibit" was a personal "misfortune" to her.

But what she doesn't say, Mr. President, is what kind of "photographic exhibit" it was that got canceled. She knows that the public, except for a minute segment of it, can never be made aware of the nature of the "art" which she feels is worthy of mandatory support by all American taxpayers.

Pictures of male genitals placed on a table is not art—except perhaps to homosexuals who are trying to force their way into undeserved respectability. Ms. Murphy failed to mention the prizewinning—$15,000 of the taxpayers, money—photograph that caused the uproar in the first place: A jerk filled a glass container with his own urine, struck a crucifix into the container, and took a picture of it. Even worse, he gave a name to his "work of art"—using a word that I will not utter in this Senate Chamber. Suffice it to say, this "artist" blasphemed the name of Jesus Christ.

Sure, Mr. President, I protested. I protested mightily. But I was not stronger in my condemnation of the "artist" than I was the "stewards" of Federal funds who decided to pay this "artist"—this jerk—$15,000 for this photograph of a crucifix resting in a glass container of the "artist's" urine.

In her Washington Post piece on Sunday Ms. Murphy referred to "a few reactionary politicians—like Senator JESSE HELMS—and their small-minded followers who have no interest in "art"—no matter how repulsive, no matter how blasphemous, no matter how arrogant.

I've got news for Ms. Murphy: All across America, good, decent taxpaying citizens are up in arms. If that's "chilling censorship," there are lot of folks around who intend to make the most of it.

Mr. President, over the weekend I read an article published last week, June 13, in the New York Tribune. it was written by James F. Cooper, the Tribune's art critic. Mr. Cooper writes a weekly column for the newspaper on the subject of Ameican culture.

Mr. Cooper's article was presented under the heading "An Open Letter to President George Bush." I intend to do my best to make sure that the President does indeed read it. It is an eloquent answer to the perverse elements in our society—to those who come forth with disgusting, blasphemous "art" which is not art at all.

Mr. President, I ask unanimous consent that Mr. Cooper's "Open Letter to President Bush" be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York City Tribune, June 13, 1989]

AN OPEN LETTER TO PRESIDENT GEORGE BUSH

MR. PRESIDENT: You are about to appoint a new chairman for the National Endowment for the Arts, an agency that dispenses almost $200 million per year to the arts.

Although articles about potential candidates have been appearing in the press for weeks, little space has been devoted to the critical role the arts play in the life of a nation.

Much attention has been focused on problems in fundraising, but less money was spent on the Italian Renaissance than is spent each year for public art in the United States. It is evident that Americans have been vastly shortchanged on their investment. The Medicis and popes gained works by Michelangelo, Raphael, and Leonardo, while American taxpayers have had to settle for "Titled Arc," "Piss Christ," and "Batcolumn."

The issue of public art should focus on quality, not quantity. Since the passage of the 1965 act establishing the National Endowments program recommended by John F. Kennedy, the number of art institutions in the nation have increased by more than 1,000 percent. In New York City alone there are now 29 orchestras, 33 opera companies, 35 theater companies and 214 dance companies.

Thousands of sculptures of questionable value have been installed in public spaces across the nation under the Art in Architecture program administered by the General Service Administration (GSA), which allocates one percent of federal money spent on construction to be set aside for public art.

Without exception, not one of these thousands of public sculptures evidence qualities that might be described as beautiful or meaningful. Millions of dollars of taxpayers money have been thrown down the drain.

Worse than the waste of money is the internecine message disseminated by these

ugly confrontational artworks. And what is that message?—that America reveres nothing; not beauty, not patriotism, not even virtue!

In contrast to the moral and aesthetic qualities evidenced in all great art since the time of the pharaohs, American public art inflicts a negative, self-destructive image upon the psyche of our nation.

Tilted Arc and *Batcolumn* by no means the worst examples) are characteristic of the thousands of ugly, confrontational, and vacuous art forms that deface public malls from Boston to Seattle. Together they stand as mournful symbols of the failure of national leadership to provide a *raison d'etre* for American culture.

Such was not always the case. George Washington, in his first annual address to Congress, advised: "Nothing better deserves your patronage than the promotion of science and literature." Washington provided money in his will to endow a national university for the arts and sciences.

In 1816, New York governor De Witt Clinton opened ceremonies at the American Academy of Fine Arts by proclaiming: "Can there be a country in the world better calculated than ours to exercise and exalt the imagination—to call into activity the creative powers of the mind, and to afford just views of the beautiful, wonderful, and sublime American wilderness and American cultural landscape."

Such words did not fall on deaf ears. Samuel B. Morse was already organizing the National Academy of Arts, and within a year a young immigrant, Thomas Cole (1801-48), from Liverpool, England would begin a cultural revolution that would establish the agenda of the nation for the next hundred years. Cole, and the artists of the Hudson River School—Frederic E. Church, Jasper F. Cropsey, Asher B. Durand, and George Inness—celebrated the American landscape as a second Garden of Eden and a "fitting place for God" in their magnificent paintings.

Morse's vision of the Academy was founded upon the moral responsibility of the artist to improve America. "We may be of essential aid to the cause of morality; or we may be an efficient instrument in destroying it; we may help to elevate and purify the public mind by the dissemination of purity of taste, and raise the arts to its natural dignity as the handmaid of Truth and Virtue, or we may assist to degrade it to the menial office of pandering for the sensualist."

Morse's moral role for the arts was not unique, in France, the great painter Jacques-Louis David, founder of the Institute of Fine Arts and Ecole des Beaux-Arts, proclaimed: "I would help the arts toward their true destiny which is to serve Morality and elevate men's souls."

Both Mores and David drew inspiration from Plato's admonition to "Seek artists whose instincts guide them to what is lovely and gracious, so that our young men may drink in from noble works."

What bureaucrat today among those who administer public-funded cultural programs speaks of moral and aesthetic values?

Former President Ronald Reagan, in his farewell address to the nation, warned against the loss of values in popular culture, which he said has seriously hurt the nation. He left it to the next administration—the "educational" presidency—to create a national cultural agenda.

The rise of crime, drug abuse, and the decline in the family, work ethic, education, and morality, are a direct result of the negative impact of American culture, particularly upon the young.

Federal art programs today are administered by elephantine agencies devoid of policy guidelines. The National Endowment for the Arts, the National Council on the Arts, Commission of Fine Arts, Arts in Architecture program of the General Service Administration (GSA), National Endowment for the Humanities, each maintain vast byzantine networks of support agencies and advisers.

No one seems to be in charge. When a public-funded exhibition of photographs of Christ and the Pope submerged in vats of urine toured the United States for a year, none of the organizers and sponsors—which included the National Endowment for the Arts (NEA), Awards in the Visual Arts, Southeastern Center for Contemporary Art, The Equitable Foundation, The Rockefeller Foundation, Los Angeles County Museum of Art, or the Virginia Museum of Fine Arts—would accept responsibility for awarding the artist, Andres Serrano, a grant of $15,000.

Each of the judges, curators, and art experts interviewed insisted they had no final say in the selection process. Indeed, suggestions that they should be held accountable drew counter charges of "censorship" and abrogation of freedom of expression granted under the First Amendment.

The fact is that it is the large cultural agencies who practice discrimination and censorship. It is clear that the NEA and the GSA have enforced their own brand of censorship by refusing to consider art forms that evidence moral or aesthetic values contrary to their own limited definition of what *is* and what *is not* "art."

Instead of allowing the creative expression of the individual artist, these agencies support only those artists who fit within their narrow interpretation of "modernism."

In this *Alice in Wonderland* artworld, Andres Serrano—who created *Piss Christ* and *Piss Pope*—received *several* grants funded with public money, while gifted artists, such as Stephen Gjertson—who paint intensely spiritual scenes—have been repeatedly denied grants from the National Endowment.

Ten years ago a report issued by the Interior Subcommittee of the House Appropriations Committee accused the NEA of "mismanagement," and reliance on a "closed circle" of advisers that resulted in a conflict of interest in contracts and grants. The report charged "The arts endowment budget has grown beyond its ability to administer and manage its programs in accordance with its own objectives."

The report's strongest criticism of the NEA was reserved for its failure "to develop and promote a national policy for the arts."

The report concluded, "the endowment has abrogated its leadership role and allowed the various project applications submitted from the field to become a surrogate national policy, shaping the program direction and emphasis of the endowment."

Despite an enormous infusion of federal funds since 1979, there has been little improvement in the management of the NEA.

In light of this Mr. President, I respectfully suggest that you withhold your selection of a new chairman for the National Endowment for the Arts until it is clear in your mind what purpose the arts serve. It might even be advisable that the National Council on the Arts—which is the advisory body to the NEA—assist you vigorously in the construction of a sound and vibrant culture agenda for the nation.

The current crisis in the arts is alarming. The Biblical admonition that "the people perish without a vision," is all so tragically true. Civilizations collapse from internal rather than external pressure, warned historian Arnold Toynbee.

The source of this dilemma can be traced to a selection process commandeered by a few who are actively involved in guiding the cultural destiny of the United States to the exclusion of a broad spectrum of artistic expression. William Diamond, regional director of the GSA, acknowledged as much when he finally bowed to the demands of several thousand federal employees to remove *Tilted Arc* from Federal Plaza in Lower Manhattan. "For too long," he said, "decisions about public art have been left to a small bunch of elitists."

The problem goes deeper than that. The conflict derives from a lack of values as well as the criterion used to determine what purpose a national art program serves. Both "aesthetics" and "morality" must play strong roles in that program. There is no evidence that these two factors play *any* part in public art today.

The arts have become so important in determining the quality of American life—indeed, the very survival of this great nation that a cabinet post should be created for its disposition. France and England both have established a Ministry of Culture.

In comparison, the NEA is the closest institution we have to such a ministry. Therefore, the chairmanship should not be tantamount to a political "reward" or "plum." It is a position in need of a "visionary," who is cognizant of the past, willing to address the current crisis, and capable of initiating a cultural agenda worthy of this nation.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today is the 1,556th day of Terry Anderson's captivity in Beirut.

On March 17, 1989, a date which marked the fourth full year of Terry Anderson's ordeal, an article appeared in the Washington Post which summarized this ordeal and commented thereon. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A CAPTIVE IN A TRAGIC LAND—ANDERSON IN 5TH YEAR AS HOSTAGE IN LEBANON

(By Nora Boustany)

BEIRUT, March 16.—It was a sunny morning in March four years ago today when American journalist Terry Anderson, shaking off suspicions that he was being observed and followed, decided to go ahead with his tennis game in a city where he felt he belonged.

But within minutes, gunmen intercepted his car, dragged him out and bundled him into a Mercedes with drawn curtains.

After covering the news of tragedies in Lebanon as The Associated Press bureau chief here, Anderson, now 41, became the news himself, as threatening statements from his pro-Iranian captors, the Islamic Jihad, shaped fears and expectations about his fate.

Today, he began his fifth year in captivity as the longest-held foreign hostage in Lebanon. Except for occasional messages, pic-

tures and videocassettes distributed by his captors and containing appeals to the U.S. government and public, Anderson now rarely makes headlines, having become yet another nearly forgotten symbol of Lebanon's despair and chaos.

During his captivity, Anderson's father and a brother have died. A daughter, born shortly after his capture, has never seen him. Four other American hostages have been freed, as have all the French hostages.

One of the released Frenchmen, journalist Jean-Paul Kauffmann, freed last year after being held three years, made an impassioned plea today for rekindled public interest in the hostages, The Associated Press reported from Paris.

In the newspaper Le Monde, Kauffmann lamented that the hostages are no longer objects of mass compassion, no longer bargaining chips, no longer even political pawns.

"The truth is that the hostages in Lebanon today have become the damned of the West," he wrote. "Without hope of being saved, imprisoned in silence and darkness, deprived of the sight of the world of the living, forgotten, they no longer represent anything. . . .

"The most tragic thing is that this torment is administered as much from the outside by countries and people indifferent to their fate as on the inside by their captors."

Trapped in an unending game of conflicting interests involving Iran, Syria and local Lebanese groups that specialize in the business of hostage-taking, Anderson and the eight other Americans still held hostage have become the only consent factor—their captivity a kind of insurance policy for their captors.

Although prospects of their release seemed to improve with a cease-fire in the Persian Gulf war last summer. Tehran's crisis with the West over a book many Moslems consider blasphemous to Islam has dashed hopes that Anderson and other hostages will soon be freed.

The controversial book, "The Satanic Verses," by British author Salman Rushdie, led to a reversal of Iran's moves toward rapprochement with western powers. The row over the book overshadowed the significance of detente between Iran and the West and the importance of the liberation of foreign hostages.

The other Americans still held captive are Thomas Sutherland, kidnaped in June 1985; Frank Herbert Reed, Joseph James Cicippio and Edward Austin Tracy, kidnaped in 1986; Alann Steen, Jesse Jonathan Turner and Robert Polhill, held since 1987, and Marine Lt. Col. William Higgins, kidnaped in 1988. Other hostages include Terry Waite, a representative of the Church of England, seized in 1987.

The kidnaping of Anderson has had a devastating effect on first-hand western press coverage of Lebanon, driving out most foreign journalists. The virtual absence now of outside journalists in a country that once served as a window for understanding the forces at play in the Middle East has had grave implications for international understanding and press freedoms in the region.

Anderson—and the others—have become casualties in a struggle against a kind of darkness that has set in. In a desperate country that is daily at war or on the brink of war, the cause of absent or captive journalists is fading. Concern over blockades, airport closures, personal safety and the bare instincts of life and death now predominate.

GEN. BILL LEE: FATHER OF 82D AIRBORNE DIVISION

Mr. HELMS. Mr. President, one of the important heroes to hundreds of thousands of Americans is Gen. William C. Lee, who is known as the father of the gallant 82d Airborne Division. On a number of occasions I have spoken of General Lee and his enormous contribution to victory over Nazi Germany in World War II.

General Bill Lee was a native of Dunn, NC, a remarkable city in so many ways. In May, Dunn was named an "All-American City" by the National Civic League. As much as anything else, that recognition was bestowed because of a museum that has been created in Dunn to house all manner of memorabilia relating to the life and career of Gen. Bill Lee, father of the 82d Airborne Division.

Mr. President, two of the many people who have worked hard on this memorial to General Lee are Hoover Adams, publisher of the Dunn Daily Record, and Robert M. Pace, now a resident of Chapel Hill, NC. Their untiring efforts have paid off. The General Lee Museum is a splendid reality, and there is an annual celebration in honor of the general, who died in 1948.

On June 6, columnist Dennis Rogers of the Raleigh, NC, News and Observer published a column of great interest to all of us who are proud of General Lee. The heading on the column: "Bill Lee created the airborne and inspired his hometown." I believe all Senators, and others who read the CONGRESSIONAL RECORD, will find this column fascinating. Thus, Mr. President, I ask unanimous consent that the Dennis Rogers column be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BILL LEE CREATED THE AIRBORNE AND INSPIRED HIS HOMETOWN

DUNN.—Bill Lee from Dunn looked a lot like another North Carolinian, a movie star named Randolph Scott. He was the perfect picture of a major general.

He stood tall and ramrod straight. His quiet demeanor, steely gaze and deep affection for his men inspired them to perform feats that even today, 45 years to the day after his and their greatest accomplishments, his name is still legend in the annals of those brave men who jump from airplanes.

D-Day, June 6, 1944. The Longest Day, movie makers called it. It is a day laden with myth and derring-do. It is the day that the largest invasion in history slammed onto the beaches of France. A well-planned but risky move, it spelled doom for Adolf Hitler and victory for the Allies. Bill Lee from Dunn was one of those who made it work.

Bill Lee from Dunn. Just a local kid, a football player and a baseball player. A big, strapping boy, he loved Dunn and Dunn loved him. He grew up in Dunn and went away to college but he always came home when he could. No one knew what would become of the Lee boy. But he did himself and his hometown proud.

There is a mansion at 209 W. Divine St. with a heroic statute on the lawn. It was Bill and Dava Lee's house, the place he came when war would lessen and he could get away. And it is in this house, and on this lawn, that his memory is preserved and his story told.

He was a career soldier. Fresh out of N.C. State University, he did his fighting in World War I, serving 18 months in the infantry in France. Then came a long, fallow period for soldiers. Throughout the 1920s and 1930s, with the Army shrinking around him, Bill Lee stayed in uniform and kept his eyes open.

During an assignment in Europe in the late 1930s, he watched, alarmed, as Hitler's army grew. And the thing that fascinated him the most were the German paratroopers. No one had done that sort of thing before, drop soldiers from airplanes with parachutes, but Bill Lee saw what they could become.

He came home to a frightened Washington. Everyone knew war was coming and knew it would be in Europe and we would be in it up to our bayonets. He talked to anyone who would listen about seeing those soldiers coming out of the sky. We need to be able to do that, he said. But no one wanted to hear it. After all, he was talking to generals who still believed in a cavalry on horseback.

But one man, just one, listened to Bill Lee from Dunn and believed what he had to say. He was President Franklin D. Roosevelt. It was the president himself who gave Bill Lee, the country boy from Dunn, the chance to become a legend.

He told Bill Lee to put together a platoon of young soldiers and see what he could do with this parachute business. He took a handful of volunteers from the 29th Infantry and within four years had formed, trained, and sent to war two of the most famous fighting outfits in the world, the 82nd Airborne Division and the Screaming Eagles of the 101st Airborne Division.

In four years this back-room organizer, trainer and planner had turned one platoon of 30 men into 20,000 elite sky soldiers.

And on this day, 45 years ago, those men jumped into the night skies of France, buying space and time for the hundreds of thousands of their comrades who stormed ashore from the English Channel.

It was a tradition that when paratroopers leaped from their planes into the thin air, they shouted a battle cry. That cry was "Geronimo!"

But not on D-Day. On that jump, when the future of the world was riding with them, they leapt from their planes and yelled, "Bill Lee!" No general could have had a greater honor, to be so loved and respected by the men he had trained and led.

But Bill Lee wasn't there with them that night. He was in Dunn, in his bedroom at 209 W. Divine St. Stricken by a massive heart attack four months earlier, he had been sent home, back to the shelter and safety of the small Harnett County town that had long been his refuge. He died there in 1948.

Bill Lee from Dunn did something else for this town. He gave the people something to believe in.

Five years ago, Dunn was just another little town on the way to nowhere. Nothing much was happening, and no one seemed to care. Realizing that something had to be done, some folks got together and proposed

that the Bill Lee's house be saved and that the people of Dunn tell the world how proud they were of their boy Bill by putting a museum in his old house. The "Father of the Airborne," they called him and they were not exaggerating.

That decision began a rejuvenation of both the house at 209 W. Divine St. and the spirit of a town that was lackadaisically taking itself for granted. The museum was finished, the town of 9,300 got some civic pride back, sights were set toward the future and last month Dunn named an All-American City by the National Civic League.

They held the local ceremony on the front lawn of Bill Lee's house. He was a shy, self-effacing man, but I think he would have liked that. He couldn't be there when his soldiers helped save the world, but he could be home, at least in spirit, when his friends and neighbors saved their town.

RESUMPTION OF NUCLEAR AND SPACE TALKS

Mr. DOLE. Mr. President, today the United States and the Soviet Union resume the strategic arms reduction talks in Geneva. If a START agreement is reached, it will have immense consequences for our national security. Therefore, as I have said before, it is essential that we take the time to do it right.

Our negotiators need to be patient, and we here in the Senate need to be patient. We in the Senate also need to be aware that our actions in this body can affect the United States negotiating posture in Geneva. This is especially true as we near consideration of the defense authorization bill.

We must be careful not to undermine our negotiators through unilateral cuts or other restrictions which could make it difficult for our negotiators to carry out their instructions from the President. President Bush has demonstrated his commitment to serious arms control. In order for these negotiations to be successful, this body must support him in that commitment.

I believe we must also keep in mind what success means in these negotiations—namely, enhanced stability and security. Our goal is not, and should not be just to make cuts. Our goal is—and should remain—to make 50 percent cuts in a way which enhances the stability of the strategic balance.

Reductions should be achieved in the context of a comprehensive and forward-looking approach to our force structure. That is why the distinguished President pro tempore Senator BYRD. The distinguished Senator from California [Mr. WILSON], and I cosponsored a resolution to last year's defense authorization bill calling for a comprehensive report on the implications a START agreement may have on our strategic force posture during the 1990's.

The Bush administration has approached our section 908 report seriously and I expect we will receive it this week.

We may not all agree on every element of a post-START force structure, but the section 908 report should provide a good basis for discussion.

In my view the U.S. approach toward a post-START environment should include an ever-increasing role for strategic defenses. America's SDI Program shows great promise for our goals of enhanced stability and security. SDI offers us the best insurance against any gaps in a START verification regime. Furthermore, strategic defense will also be our best insurance against mobile missiles.

In view of SDI's great potential, it is critical that the United States continue to protect and promote strategic defenses at the defense and space talks. In fact, I believe that a transition to greater reliance on strategic defenses will complement our efforts in the area of strategic offensive reductions in START.

I wish the best of luck to our Ambassadors Richard Burt and Hank Cooper in Geneva. The Senate observers will be traveling to Geneva next week and will be meeting with our negotiators. I won't be able to make this trip, but I look forward to hearing their report upon their return.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

CHILD CARE IMPROVEMENT ACT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of S. 5, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 5) to provide a Federal program for the improvement of child care and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Mitchell amendment No. 196, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, today I rise to express support for the Act for Better Child Care legislation. It has been almost a year since I conducted the Senate Appropriations Committee field hearings in Las Vegas to investigate child care concerns and needs. I heard some shocking and even moving testimony from needy families and single mothers who cannot find work because they cannot afford child care.

Mr. President, at this hearing there were a number of witnesses who testified: juvenile court judges who deal with this problem on a daily basis, we had statements of child care providers, sociologists from the university and high school level, and many other people testified.

What I want to bring before the Senate today is just a little bit of testimony from some of the mothers who testified at this hearing. As I indicated, Mr. President, this is just a little bit of the testimony that was given from some people who I think see it from a perspective that perhaps we do not. This is a statement of a woman by the name of Diana Cybil.

My name is Diana Cybil. I'm a resident of Las Vegas now for almost 20 years. I have been on the ADC for almost 2 years, since my divorce, with my two sons.

When I found out about this program I was thrilled to know I could go back into the work field. Only because of the child care did I accept to go on with this program.

This was a new, experimental program that allowed women to work and also have child care.

My main reason for not working and staying at home with my children was because of not having the child care.

Now that I am working and receiving child care, it's given me the incentive to go on and make something of my life and for my kids. But if we lose this program here with the ADC, when I get off of it, when I find a job, it will not be beneficial to me or my children to go on with the work field. More or less stay on ADC.

Another statement from a woman by the name of Julia Davis:

I'm a resident of Las Vegas. I've been here 2 years.

I am here to talk about child care. Because of the very difficult marriage that ended in divorce which left me as a single parent, I have two kids. I had no other choice but to apply for ADC.

Through ADC I got on the work program. I'm getting good training, but once the training is over I'll be prepared to get a job.

But once you get a job, you lose all your benefits and child care will still be a major problem.

If child care was available years ago I wouldn't be on ADC now.

I don't want to be on ADC. And there are many others on ADC that feel the same way that I do.

I want to work but the child care expenses will be at least one-half or more of my pay. The system, the way it is now, won't allow me into the work field.

Mr. President, here is the statement of a 12-year-old girl. Again, we look at her problem, I think, from different eyes but let us look at it in her own eyes.

My name is Lashona. And some of my experience is—OK, like when we get out of school you see some kids around where I live at. People are selling drugs to the kids and, you know, the parents are off at work.

And we need a day care center for the kids to go to until their moms get off from work.

So we need to have a day care established because you wouldn't like your kids around pushing drugs, pushing drugs onto other kids and kids dying because of different drugs being pushed on and different diseases. Our parents need to work and sometimes kids cannot be around some of our parents because of things that's going on.

Like parents in a divorce, they need time with their kids in a day care center but I think we really do need a day care center for the kids to go into and stop drugs from being pushed around.

Mr. President, a woman by the name of Deborah Mays gave some examples of how difficult it is in Las Vegas, which is like other places as far as finding a place for your children to be provided for. This is a woman talking about making the commitment to go to work but having the problems of trying to find a place for her three children.

I began my search for a babysitter, with three kids by my side and no money, at the grocery store bulletin boards. The boards were full of ads from other single mothers also in need of sitters. I also searched many laundromats and found the same thing. There were lots of ads from others in need of care providers.

I did find one ad for licensed day care in a private home. The charge was $24/day for three children. I was making $6.78/hour, (which is twice as much as many other single mothers earn), and still I could not afford to pay out half of my paycheck for a babysitter and pay my bills and household expenses. I just coud not afford to do it!

I checked the senior citizen job referral listings and the jobs requested list. I found that there were many others requesting sitters but apparently no seniors interested. I telephoned local churches, talked to school officials, and to other parents and found only that the child care dilemma was nothing new. I knew it would be difficult but I found the problem unbelievable and out of control.

I placed an ad in the newspaper, for a sitter to come to my home. I received calls from other people asking what type of response I got from my ad and they wanted to know if I could help them. Finally, I found someone willing to work with me according to my ability to pay.

Still there were many other child care problems that came up. I didn't even know what to expect when I came home. I didn't know if my children would be fed, bathed, safe from neighborhood bullies and off the street or babysitting the babysitter! I had to put up with people and situations that I didn't want to in order to keep child care services so I could keep my job.

Sometimes, when my main sitter was not available, I had to rely on neighborhood teenagers. Some months, I would have several different sitters. With each sitter, there was a new set of problems! My home was ransacked and things came up missing. Groceries disappeared from my shelves. Meals I prepared for my children were fed to others while my children went without supper. My job was threatened by harrassing phone calls to my employer. Every day it was something different. There was even a jealousy problem because some neighbors could see I was getting ahead. Some of the sitters questioned the children about our personal lives. I have put up with unreasonable attitudes and irresponsible behavior so I could work and stay off welfare.

At one point, my children insisted that I stay home with them. They promised to clean yards to pay the bills so they would not have to deal with the parade of sitters. My children did not understand when I told them it was time for us to move up and that all of these problems were a part of the process. It is much harder on me because I know I am fighting for our survival.

My testimony represents the problems of many other women, both those on A.D.C. and the working poor. Our children don't understand the way we must live. We need assistance with job training, educationl and child care. It is my main concern that the ABC Bill (Act for Better Child Care), if passed, will first benefit those families on ADC and the working poor who earn less than $13,000 a year.

Mr. President, there is more, much more. This is some of the testimony that went into the Act for Better Child Care and I applaud and commend Senator DODD for his tireless work on this effort because the people that I read into the Record here today are the people that this legislation will help. We are not working in a vacuum. There are people who will benefit directly and they will benefit quickly as a result of the passage of this legislation.

At this hearing, I heard the grim statistics all over again. I had heard them before, but somehow the numbers become real when you see and hear the hurt and frustration of a parent trying to make a living and care for their children. This testimony that I heard in Las Vegas made this a personal experience for me.

Mr. President, my personal experience has always included a traditional family scenario in which the mother stays at home and rears the children while the father provides for the family's financial needs. My support for the ABC bill in no way diminishes my respect for those who make the choice to be full-time mothers, but for most women entering the work force, this is no longer a matter of choice. In the decade from 1970 to 1980, the number of single-parent families in Nevada increased by the extraordinary rate of 146 percent. From 1980 to 1990, I believe it will go even higher. In families with two parents, the dual income is no longer a luxury; it is a necessity.

In Nevada the lack of affordable child care takes on a great urgency because we have a 24-hour-a-day economy. Both men and women work shifts all through the day and all through the night. The child does not always have a traditional haven provided when the mother and father return home after a day of work on the job. Day care in Nevada means night care in many instances. The ABC bill requirements for licensed child care facilities and health and saftey standards is critical for the well-being of children whose parents are away from the house by day or by night.

A short time ago, I introduced legislation for victims' rights with the focus on the rights of child victims. While working on this legislation, I delved deeper into challenges that a young child carries on his shoulder as he makes his way through day care, through school, on the streets and even at home. None of these places are always inviting or are they safe. When I introduced my bill, I repeated the familiar saying that today's children are our hope for the future. I actually invoked the words of a parent who said children are our future, but we are their salvation.

We have a responsibility in the United States Senate to the children of this Nation. Passage of ABC honors at least part of that obligation. Some who oppose child care legislation allege that it will cost too much, but the money spent now would be minimal compared to what is usually paid out for remedial education, juvenile justice, rehabilitation and welfare generally.

Mr. President, in this hearing held in Las Vegas, there was some unique testimony by Judge John McGroarty, who is a judge of a court of unlimited jurisdiction who has the assignment and has for the last several years been the chief judge responsible for juvenile matters in Clark County where Las Vegas is. He said that we would save for every dollar spent on child care. We would make for this government $5 in money that would not have to be spent for remedial education, juvenile justice and welfare generally. Judge McGroarty speaks for the juvenile judges in this country. There is a problem. We are being penny wise and pound foolish because this bill will save money.

The situation is very similar—that of child care—to that which I have come to know well in Nevada, the problem of illiteracy. Directing money toward literacy programs now means less money paid out later. Illiteracy exacts its price on a greater number of welfare beneficiaries; lost taxes and lost productivity. Literacy, like child care, requires an investment now with a tremendous pay back for a stable productive society in the future.

Mr. President, I extend my strong support for the Act for Better Child Care, and I would like to conclude with a statement by a public private enterprise in Nevada called the Children's Cabinet. This group studied the plight of Nevada's children and summarized the situation with a statement applicable to the children throughout our country. We should heed their words, which are as follows:

Our future and our children's future depend on the priorities we select today. It depends on our success in keeping children safe and families together. We can choose to continue to build more detention centers, jails and prisons, or we can choose to commit our resources to prevention, early intervention, and treatment programs to strengthen families and protect our most precious resource, our children.

I yield the floor.

Mr. DODD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from

Mr. DODD. Let me commend my colleague from Nevada, first of all, for his comments this morning, but second, as far as I know, he is one of the few Members of this body who on his own conducted a hearing in his own State on this issue. Others of us have listened to our constituents and talked to groups as they have come through town. I held hearings, of course, here in the city and elsewhere as chairman of the subcommittee dealing with this issue. It is unique, indeed, when a Member not necessarily involved in a committee situation, as the Senator was at the time I believe, but invited people all across his State representing a diverse set of view points, in the State of Nevada to come and testify before him so he can learn first hand what the needs of his own State would be in the child care arena. I commend him for taking that step because it gives our Members and colleagues an opportunity to get a feel and a sense of how our own constituents feel about this at the local level.

I think there is an assumption with legislation like this that it is an idea popular in Washington maybe; that this is an idea like some specialist or some academicians or some professionals in the arena would like to see adopted but that it does not mean much to the average constituent who is working hard trying to raise a family and making ends meet. Our colleague from Nevada has gone out and tested that theory in his own State and discovered that, in fact, his constituents, without getting into the specifics, if you will, of a specific piece of legislation have said we have a problem; we have a problem in paying for child care. It is very expensive for the average family. We are concerned about whether or not we can find it even if we can afford it and if we can find it and afford it, we are deeply worried about who these people are who are watching the most prized possessions in our lives, our children.

So the answer came back from the people of Nevada, we would like to see something happen that would help us out in terms of improving the quality of child care, making it available and, to the extent possible, reducing the cost of working families for child care as they try and make ends meet.

I commend him immensely for having taken that step. His knowledge of the issue is rooted in that first-hand information which is the best information Members can always get, and that is from the people they represent. I thank him for his kind comments, I thank him for his remarks this morning and, most specifically, I thank him for taking the steps of inquiring of his constituents what their real interests are in this legislation.

Mr. President, I would like, if I could, at this juncture to bring my colleagues up to date on the legislation before us. We have had now two days of debate, not full days, only about 3 hours or so on Thursday and 3 hours or so on Friday. There were no votes. The leader has indicated there would be no votes today prior to 5:30 p.m., and even that may change depending upon a meeting, I gather, the leadership will be having a little later this afternoon. There are a number of amendments that are being drafted that I believe are noncontroversial, in which case the votes would not be required. We may deal with some of those this afternoon.

If I could, I would like to just brief my colleagues on the parts of the ABC bill, what is in the ABC bill as it is now before the Senate, having been resubmitted in the form of a substitute offered by the majority leader.

Mr. President, what I have with me is a chart that lays out the elements that are included in the Act for Better Child Care, S. 5, as revised, I would add, by, one, the National Governors Association agreement that was struck a number of days ago, and further by a substitute that was offered by the majority leader last Thursday that is now the legislation pending before the Senate.

First of all, the Act for Better Child Care is rooted on the desire to try to address three basic problems that the American family is facing today with the need for child care; that is, the availability of child care, the cost of it, and the quality of it. That has been said over and over again.

I might add, Mr. President, at the outset there was some debate as to whether or not those three issues were legitimate issues, whether or not in fact American families were having difficulty with those three parts of the child care issue. We now know as a result of numerous surveys that have been conducted across the country in fact those are the three problems that people are looking at.

In the Act for Better Child Care, we thought, unlike many other bills that have been adopted in the past, what we ought to try to do is see to it that the greatest percentage of the resources go directly to the parents in need rather than going through bureaucracies at the Federal level or the State or the local level, trying to get as much assistance directly to the people who have the crisis in child care, the affordability side, try to relieve the burden of cost. So 70 percent of the funds included in the legislation are direct assistance to low-income and working families. The income levels that are qualified to receive these funds are to be determined by each State with a cap that goes on about a level of 120 percent or so of median income, so the range would depend upon what the State decided, but it goes from low right up to the working families and 70 percent of the funds are direct assistance to people in those income categories.

Who can receive that assistance in addition to the parents? Relatives. There was great concern about whether grandma or grandpa could actually provide child care and be compensated, or the aunt or the uncle or the sibling who would be of majority age. In fact, all of them are included as potential recipients under the 70 percent. No one is excluded.

Second, some said you are going to deny choice to people, you are going to discriminate against religious based institutions or center based or school based or neighborhood based. You come up with a name. The fact is, Mr. President, no one is exempt. No one is excluded. Religious church care, center-based care, neighborhood care, family care, relative care, all of them quality, provided of course the State has licensed them, which is the way it ought to be. It is not the Federal Government licensing them; it is the State licensing them.

Last, in that same category, we should emphasize that there is no effort to try to take those funds and get them caught up in the cost of running these programs, which has been the case in the past.

So the first element, the 70 percent, is designed to reduce the affordability problem and not to deny at all people the opportunity to choose where they would best like to get child care. It is direct and it is meaningful assistance.

The second element deals with the availability of child care and to some extent the quality of that child care. To that we allocate 22 percent of these funds. These would allow for establishing some State standards, training, resource and referral, licensing, grants, and loans to help encourage people who might want to get into the child-care business, low-interest loans to make the renovations in their homes or elsewhere to get underway, a special authorization for State liability risk retention pools. We have been told as a result of our hearings over and over again that one of major costs of child care is insurance, and at the suggestion of our colleague from Utah [Mr. HATCH] we included the special authorization for State liability risk retention pools.

There is a section in this part of the legislation that encourages business partnerships. We are trying to encourage far more businesses to be involved in supporting child care. Today there are only about 750 or so businesses that actually have onsite child care. There are only a few thousand that support child care even to the extent of getting involved in resource and referral issues. So the 22 percent goes to improve supply, increase the availability, encourage the expansion of child care services in our States and local-

ities, and simultaneously to try to raise the level of quality and to do that in a positive, constructive way rather than a threatening way.

It has not been uncommon in the past when Federal legislation was adopted that the Federal Government has said if you do not do these things, we are going to penalize you. That is not what we do in this legislation. First of all, we do not say to the States exactly what each standard ought to be. We let the States decide that. So when we get to the issue of class size, let the State decide it. If Connecticut decides that there only should be 15 or 20 young people in a child-care classroom, then that is up for Connecticut to decide. If Utah wants 40, that is up to Utah. What we say is the class size is something to which ought to pay attention. We say much the same about ratio of adults to minors, supervision. Again there are those who will advocate it should be one adult to four children, that is enough children to supervise. I am inclined to agree. But rather than say in this legislation each and every State has one adult for every four infants, we let the States decide what that ratio ought to be. And that is the case in each and every one of the standards.

We feel very strongly that there ought to be minimum health and safety standards. Again, that is not anything people ought to argue with but rather than have the Federal Government say to all 50 States, to Iowa or Connecticut, here is what your health and safety standards have to look like, we allow Iowa and Connecticut to decide what those specific standards ought to be in that category. So unlike legislation in the past which has provoked a great deal of dissent and argument, this legislation is designed to give maximum flexibility to States, maximum flexibility for choice.

Let me come back to parental choice because that is one of the major points raised by those who oppose this legislation—we deny somehow parental choice.

We feel just the opposite. We feel we encourage and maximize parental choice by insisting that there be some standards in this area; we make it possible for families to make better choices. I happen to feel it is unfair to ask the average mother or father to go into a child-care center and determine whether or not the electrical or plumbing system is sound or safe. There ought to be a basic floor of minimum standards to which parents can have some degree of confidence and assurance that those standards will guarantee a minimum protection. What we have done in this legislation, by establishing those minimum standards which each State would decide, we increase the flexibility of parents. We make the choices easier for parents when they walk into a potential site where they are going to leave their infant child. Remember, an infant child under the age of 4 is not in a position to go home at night and complain about the food or to suggest the plumbing or the electrical system is not good. You are taking a highly vulnerable infant and placing them in a situation where the parents are gone. Every day, they are with people they do not know and you ought to have some assurance and some confidence as a parent that the basic minimum health and safety standards are in place; that you as a parent shopping for child care ought not have to determine whether or not the child care providers are felons, whether or not they have a record of child abuse. These are the kinds of things that States ought to be able to do to maximize the choice that parents have in deciding the child care setting they would like for their children.

So 22 percent goes into that area, to have some model standards, to encourage standards in those areas, and also to encourage the availability, to support and expand the availability of child care.

Last, Mr. President, 8 percent of these funds are for State administration. Again, not an uncommon complaint we received is that too often we provide or insist upon States doing certain things and then provide no assistance to them for the cost of doing those things. Well, here we have allocated 8 percent of these funds to be used by the States for whatever costs may be associated with this bill at the local level.

So in every single area, direct assistance going to the parents, allowing them to have maximum choice, trying to increase the supply of child care, provide, at least to the extent possible, encouraging standards which will guarantee improved quality of child care and then reducing or eliminating the costs to the States in having to take on the burdens that some of this legislation may impose.

So those are the three major legs of this legislation that are important, I think, for Members to be aware of. Since the substitute has been offered or at the time the substitute was offered by the majority leader I should add there have been three elements which were changed and included in that substitute. One is the level of the authorization of this bill. It has been reduced. This legislation in the past had an authorization level of $2.5 billion. That authorization level has been cut in half to 1.75 so that if you take the tax element of this legislation, the tax credit for child care equals the authorization for the Act for Better Child Care. So you have some symmetry in the bill.

Second, we have modified this version to include the so-called Ford-Durenberger amendment which permits parents to use certificates for sectarian child care programs provided this is done in a manner that is consistent with the Constitution. That, again, was a major element that people have been concerned about. It is no longer an issue here. It is included in the legislation.

Last, we made some changes in the incentive grant program. Under the leader's substitute, no State will be rewarded and no State will be penalized based on where the State standards are in relation to the national recommended standards. All States would have a 20-percent State match as long as they received ABC funds. That had been a concern of some in the past, that there was some discrimination here between the funding. That is no longer the case at all.

So those are the modifications that have been made in the legislation.

There are, of course, other elements to this bill that have already been addressed by the chairman of the Finance Committee, Senator BENTSEN, who on Friday addressed the part of the legislation which emanates from the Finance Committee. By a vote of 17 to 3, the Finance Committee reported the tax credits legislation. Let me just mention briefly what is in those again for the purpose of Members being aware of what is in the bill: The tax credit for child health insurance premiums, the bill to provide a new refundable tax credit of up to $500 for low-income families that purchase health insurance coverage for their children. A credit would be allowed up to 50 percent of the amount paid requiring health insurance up to $1,000 annually. The 50-percent credit phased out for families with adjusted gross incomes between $12,000 and $21,000. The phaseout is accomplished by reducing the credit by 5 percentage points for each $1,000 if the taxpayer's AGI exceeds $12,000.

To be eligible for the credit, the health insurance policy must provide coverage for one or more of the taxpayer's dependents under the age of 19. The credit would be effective for taxable years beginning in 1991.

The second part of the legislation involves a change in the refundable dependent tax care credit. The present law provides tax credit for qualifying child care expenses that enable the individual to work. The credit is 30 percent of allowable employment-related expenses for taxpayers with an AGI of up to $10,000. The committee measure would make the current dependent credit refundable for taxpayers with adjusted gross income of $28,000 or less. The credit would be 33⅓ percent refundable for 1990 and 100 percent refundable for all subsequent years.

Beginning in 1990, the percentage for credit would also be increased for

the lower income families, be raised to 34 percent for taxpayers with an AGI of less than $8,000 and 32 percent for families with adjusted gross income between $8,000 and $10,000.

The current law credit would also be modified to provide that no credit would be allowed for child care expenses to the extent they are paid, reimbursed, or subsidized by the Federal, State, or local governments.

I am sure the chairman of the Finance Committee and others who have been involved in that will be glad to go over the specifics of those in the bill. But they have been added to the Act for Better Child Care. So you have the refundable tax credit—a tax credit for health care costs. We now know of 37 million Americans with no health coverage at all. About 12 million to 13 million of that number are children. We are trying to reduce that number, of course, in the ABC portion of the bill.

I see my colleague from Utah has come to the floor. But I will be anxious to have Members come over who are interested in examining this legislation, and to go over the various pieces of it as we further debate the legislation today.

Mr. President, I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Iowa.

Mr. HARKIN. Mr. President, today the Senate is presented with an important opportunity—an opportunity to do something positive for thousands of American families. Families in which parents are confronted every day with the kinds of choices with which no one wants to be faced—choices which involve the safety and well-being of their children and the economic integrity of their families.

Some early childhood experts contend that young children suffer if their mothers leave home and enter the work force. Others disagree. The point is that for many women today, entering the work force is not a matter of choice. It is a matter of economic necessity. It is not a matter of going to work to be able to afford life's little luxuries, it is a matter of going to work to be able to afford the basics—things like rent, food, and health care for their families. And every day these young parents are being forced to make untenable choices regarding their children's welfare.

The question of who will care for the children of this growing number of working mothers and how these children will be cared for is among the most urgent problems we face as a nation. We cannot afford to let this opportunity pass by.

Not so long ago, tragedy struck right here in the D.C. suburbs, when a working couple, with no better option available to them, was forced to leave their 8-year-old daughter in charge of her little brother and his playmate. When a fire broke out and she ran for help, the door locked behind her and both of the younger children died.

Out of sheer desperation, too many parents are forced to leave their children in situations that they realize are far less than satisfactory, if not downright dangerous. Low-income parents particularly face the dilemma of having to place their children in inadequate or potentially harmful situations or forgoing the work and training opportunities they need to provide food and shelter for their families.

We can no longer allow our children to pay the price for unsafe and inadequate care. As the parent of two young daughters myself, I do not believe there is a parent out there who does not worry about the safety and well-being of their children when they cannot be with them. We have the opportunity now to do something that will go a long way toward making safe, appropriate, and affordable child care available to the families that need it most.

My constituents back in Iowa are very concerned about child care, and they tell me that one of the most important things that a child care bill should do is to make sure that parents have a choice as to where they leave their children. Right now many parents do not have that choice.

It may come as a surprise to some that there is a critical shortage of child care in rural areas. Why there is not even one licensed child-care center in Van Buren County in Iowa, a county of 8,600 people. And it is not because there is not a market for child care. The newspaper recently reported the dilemma of one young mother in Keosauqua—a town in Van Buren County—who is looking for child care for her baby. She says she is looking for "something with a clean environment, balanced meals, a place that is State-approved and isn't too overcrowded." Well, she is going to have a hard time finding it in Van Buren County when there is not even one child care place in the entire county. And this situation repeats itself over and over again all across the country, especially in our rural areas.

Parents like this young woman do not have a choice when it comes to child care. And giving them a few extra dollars a week through a tax credit will not give them that choice. Tax credits as they are being proposed by the Bush administration and others do nothing to address the availability of quality child care to meet the varied needs of today's families. And they certainly are not sufficient to give these parents the option of staying home.

Tax credits as are proposed in this bill will be a way of enhancing the income of the poor, and they will complement the provisions of the ABC bill. That is why I support the tax credits that are part of this bill, because they do not supplant but they complement the other provisions of the ABC bill that speak to availability, quality, and affordability of child care.

That is why tax credits must be a part of the bill, but must not be the only thing in and of themselves. Tax credits alone will not give families a choice. Tax credits alone will not give these families the power to decide for themselves how they want their children taken care of. Tax credits, as a part of the overall bill, will indeed provide that kind of choice.

The Act for Better Child Care Services will help communities increase the availability of, and access to, good quality child care. It will encourage diversity and will expand, and not constrict, parents' child care options, options which would include family and relative care, as well as church-based care. The ABC bill will help build the infrastructure of child care to give parents a real choice. It will not build a new bureaucracy. The bottom line for me, basically, is that the ABC bill gives power to families to make the choices, to decide for themselves where they want to have their children taken care of.

A window of opportunity is now open to use to secure the future of America's families, especially those low-income families who share the same concerns, hopes and fears for their children, as do you or I. We must take advantage of this opportunity and not let it go by.

I am pleased to be an original cosponsor for the Act for Better Child Care services. I want to take this opportunity to commend my colleagues, especially the distinguished Senator from Connecticut, my good friend, Senator DODD, who has given, I know, at least 2 years of his life to making sure that this bill is drafted through committee and here on the floor of the Senate.

Again, Senator DODD, I know, has spent hours, days, weeks, months of his life, ensuring that we have a bill that addresses all the needs, not a narrow bill, but a broadly based bill, and one which really addresses the essential problems of the lack of afforable quality child care for our working families.

I also want to commend the chairman of the full committee, Senator KENNEDY, and the ranking member, Senator HATCH, and their staffs, who have spent countless hours developing a balanced and comprehensive response to the child care crisis in a truly bipartisan spirit.

The recent agreement reached with the National Governors Association regarding child care standards attests to the fact that all of us realize that the time has arrived to support comprehensive child care legislation.

I also want to point out, Mr. President, that the current vice-chairman and in-coming chairman of the National Governors Association, is the distinguished Governor of my State of Iowa, Governor Branstad. I am pleased and proud that he has signed on as a supporter of the ABC bill that is now before us.

The addition of a tax credit component, as I said, further complements this bill. We can be proud that we have finally recognized that American families deserve bipartisan support. An editorial appearing in the Des Moines Register this past year stated that the ABC bill, "has the potential to make life better for America's working poor, make life safer for their children, and ease the welfare burden on all of society."

Mr. President, I think that about says it all about the child care bill before us. I am hopeful that we will handle any and all amendments expeditiously. I hope that the bill passes as quickly as possible and that the President will sign it into law at the earliest possible time.

Again, I want to really compliment my friend and distinguished colleague from Connecticut for all of the work that he has done on this child care bill. As I said earlier in my remarks, for the last couple of years there has not been a time when I have met Senator DODD in the hallway and on the elevator and in a committee meeting that he has not said something to me about the ABC bill and the need to get it wrapped up and through the floor, and get it on its way. He has been the real engine that has been driving this legislation, the sparkplug behind it, and it is really a credit to him that we now have it on the floor, I think, with strong bipartisan support.

I also want to compliment Senator KENNEDY and Senator HATCH. Senator HATCH, I know, has worked a long time on this bill, also, and has had great input into it; from working with Senator HATCH on other issues, especially those dealing with the handicapped, I have been impressed with his deep care and concern about this issue of child care and his concern that families have choices, that they are able to put their children where the parents feel best, not where the State or Government or some bureaucrat might feel is best. I want him to know that I join him also in that concern.

The last thing, Mr. President, as the Chair of the Subcommittee on Appropriations that appropriates money for Health, Human Services, Education, and related agencies, it will fall within that subcommittee to try to find the money for this child care bill. As I said, I hope that the bill expeditiously passes and the President signs it into law, and then we will have to come down to the really hard business of finding the funds for next year. The clock is ticking away. We now find ourselves in mid-June, and we hope to have our appropriations bills passed and on their way by the end of September, to meet the deadline of the beginning of the fiscal year.

I urge my colleagues and others who support this very important piece of legislation, to help secure a 302(b) allocation from the Budget Committee and the full Appropriations Committee, that will allow us to begin funding the ABC bill; to make sure that we do not just pass authorizing legislation and then not have any money to meet the real needs of the families out there that have been waiting a long time for this legislation.

So I am hopeful that we will get this bill passed, but I hope that we can find the financial resources, so that when September rolls around, we will be able to put in the appropriations sufficient money to get this program on its way at the beginning of the next fiscal year.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I have consulted with the distinguished Republican leader and with the managers of the bill, both Senators DODD and HATCH, and I believe the best course of action now is for me to indicate that there will be no rollcall votes today, that amendments may be offered which can be accepted.

If any amendments are offered which require votes, then we will, by agreement, put them off until tomorrow. So there will be no rollcall votes today.

We expect to continue on the bill. Senators should be aware—and I repeat this, and I believe this will be the third time I have said that, so I hope Senators will take it to heart—that there are likely to be evening sessions with votes throughout this week. I hope to finish this bill this week, and it is an important bill, very complex, and, in some respects, controversial.

So Senators should be aware and should arrange their schedules in such a manner as to anticipate the possibility of lengthy sessions throughout the week, including Friday, if necessary.

Mr. President, I thank my distinguished colleague.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. DODD].

Mr. DODD. I commend our colleague from Iowa for the statement and for his help over the last year and a half or so. We serve on the Labor Committee together, and he is a member of the Subcommittee on Children and Families and Drugs and Alcoholism, from which this legislation has come. He has been tremendously helpful, and the record ought to reflect that as a result of his labors, one of the things that have been included in this bill is a significant emphasis on rural child care delivery. The tendency, if you listen to some of the remarks and speeches, is to think this is geared to urban areas. As a result of the efforts from the Senator from Iowa, we have insisted that a major portion of this legislation be focused on rural delivery of child-care services, the availability, quality and cost of that child care, and I thank him immensely for that involvement.

I also point out—and the Senator from Iowa has said this is a bipartisan bill, and it clearly is, as reflected by the two managers of this legislation on the floor, Senator HATCH and myself, who are proposing this legislation; but it goes beyond just partisanship here in the U.S. Senate.

The distinguished Governor of the State of Iowa who is a member of the Republican Party in good standing, I might add, a conservative Republican Governor of Iowa, Governor Branstad, who is the incoming chairman of the National Governors Association, signed a letter along with Governor Kean of New Jersey, a Republican Governor, and Governor Clinton of Arkansas and Governor Baliles of Virginia, two Democrats, the outgoing chairmen of the National Governors Association and the two incoming chairmen of the Governors Association in support of the Act for Better Child Care.

So when we have our Governors across the country, Democrats and Republicans, from the States of Iowa, Virginia, Arkansas, New Jersey, as well as Republicans and Democrats here in the Senate, supporting this effort, then I think we can lay claim to the fact that we have reached out and developed clearly a bipartisan proposal.

So I thank Governor Branstad as well for his support of this effort and again particularly the Senator from Iowa for his help on the critical areas of resource and referral in rural areas of this country. He has done an excellent job.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is my privilege to be on the floor and to chat about this particular bill a little bit more as we go into this week, an important week historically, it seems to me, for women, children, and families. This is a family issue. This is an issue that I think can make a difference in America and can help to solve some of the problems that we have in this country that are causing great anguish and great difficulty for a lot of people.

I thank the distinguished Senator from Iowa for his kind remarks concerning me as well as the others who

have worked so hard to try to bring this bill to fruition.

This is not an inconsequential bill. This is a bill that has tried to reach out or at least the chief sponsor and myself have tried to reach out to every Member of the U.S. Senate, and hopefully the Members of the House as well by trying to fashion this bill and conform it so that it meets the needs and the wishes of the vast majority of the people in the Congress.

I started on Friday talking a little bit about some of the misconceptions about this bill and some of the things that have been said about it, and I would like to continue that for just a few minutes and then I would like to chat just a little bit more about child care and how important it is and how important this particular subject is.

I am interested in one of the criticisms that some of the opponents of this bill have lodged against the bill. One of them is that they say that the families will receive virtually no ABC funds, that this bill really does not do much for child care.

I have to say there are a lot of misunderstandings with regard to the 70-percent requirement for direct assistance. They are saying that the only way the family is going to have a choice for child care is of course to do it through the refundable tax credit approach or through a tax credit approach where the families can use the money any way they want to. Of course, there is no obligation for them to use that money for child care, nor is there any way under the tax credit approach which I also support that they will have quality child care guaranteed because there is no way there is any encouragement to try to meet certain minimum standards to effectuate good child care, nor is there any way that there will be an increase of child care slots through solving the problem of availability if you go the tax credit route.

The fact of the matter is that that is not the only way that you can get families to have the choice with regard to the child care that is available. These funds in the ABC bill are to be used for direct subsidies to families. They can go directly to the parents in the form of a child care certificate or some call it a voucher, or they can go directly to the parents in the form of a prepaid slot in a child-care facility or in a family home.

Now that is helping parents and they can make the choice where their child goes for child care. If they get a child care certificate or voucher, they can use that certificate anywhere where child care is provided. If they ask for a prepaid slot, then they make the choice as to which slot their children are able to choose.

So there is little or no difference except that the moneys pursuant to this bill go for actual child care. They go for child care that has a reasonable set of minimum standards to be set by the State but certainly within categories that we define in this bill that I do not know anybody who would disagree with such categories, and they go for child care that is in the opinion of those parents the best form of child care for them and their children.

We considered requiring States to utilize voucher systems only, but were instead persuaded by the argument that States deserve the flexibility to use whichever mechanism or combination of mechanism for service delivery they believed was most effective to meet their own needs.

So we have left it up to the States. If they want to put the money into child care certificates, they can do that. But if they want to pay for prepaid slots for children so that the children can be placed in whatever slots the parents like, that is fine, too, whatever they would like to do. We have tried to bring bureaucracy down to a minimum. In fact, there is only one person under this bill in the Federal Government who will be responsible for child care, and that person is an existing member of the Department of Health and Human Services. We provide for a title for that person.

The real power is given to the States, but we do suggest that they handle these moneys for child care and that they utilize some of these moneys for the development of available slots for the children, and that they work to create quality child care for their families within their individual States.

For example, States may want to use certificates for areas within the State that have a variety of available child care options. States may also believe that prepaid care is better where availability is a problem.

So the States have that flexibility and in the process it really translates that the parents have the flexibility because either way they can call upon the States for help.

Currently, 26 of our 50 States have certificate programs, and I certainly agree that that approach is very desirable and we do have that as part of this bill.

But, I do not agree that a State's use of a contracting method means that families will not be directly helped, because they will be under this particular bill and anybody who says otherwise is not being fair or they just have not read the bill.

Another criticism that has arisen about the child care ABC bill is that the ABC bill provides no help to typical families since 75 percent of per-school children are cared for by parents and relatives.

I certainly agree that parents should have choices. When a grandparent or relative can provide care, I think that is wonderful. The ABC bill does allow for care by relatives virtually without restriction.

Unfortunatley, testimony provided to the House Select Committee on Children and Families in 1987 indicated that reliance on care by family members or relatives was dropping and that this care was becoming relatively—no pun intended—more expensive.

Additionally the ABC bill does not prohibit informal child care arrangements with friends and neighbors. Perhaps the opponents of this legislation are referring to the fact that when public money changes hands, certain strings are attached. If a neighbor cares for children, there are no restrictions really imposed by this bill on that neighbor unless the State itself has already made such arrangements subject to State regulation or registration.

So the argument that the ABC bill provides no help to typical families, since 75 percent of schoolchildren are cared for by parents and relatives, is not quite accurate, because family care is dropping.

The ABC bill also requires States to set standards for family-based providers receiving public funds that are appropriate for this type of care. There is clear recognition in this ABC bill that family-based providers should not be held to the same standards as center-based providers.

So we clearly, clearly resolve that problem. And, again, those who make these kinds of arguments either have not read the bill or they have not cared to analyze it correctly.

Another criticism that has arisen through the many months that we have tried to fashion this bill so that it would meet the needs of the most people in our society is that the child care certificates authorized by ABC would be ineffectual.

It has been said, based on experience with the social services block grant, that most States would not offer certificates. The fact is that most States do operate certificate programs. Twenty-six States offer vouchers to eligible parents. The ABC bill certainly does not discourage this practice.

It has been said that parent's choices would be restricted under a certificate program because they could not be used with a wide variety of providers. The fact is that parents issued a certificate under the ABC bill could use it absolutely anywhere that met the State requirements for licensing, regulation or registration. These choices for parents include family-based care, churches, school-based extended day programs, for-profit providers, or community-based programs. The only exception is a certificate used to reimburse a grandparent, aunt or uncle. Relatives do not need to meet any requirements imposed by the ABC bill.

Critics of the ABC bill argued that a provision requiring a three-way contract among the State, provider, and parent was a backdoor method for diluting parental choice. In fact, this provision was to assist the State in accounting for and monitoring the proper expenditure of funds. It was never intended by the committee to undermine the use of certificates. So, to be absolutely clear, this contract requirement was deleted from the bill as part of the Ford-Durenberger amendment requirement.

So much for that particular argument.

Now, finally, one of the arguments has been that grandmothers would have to meet standards.

Not so. Relative care is exempt from any standard or requirement imposed by this bill. And this bill basically imposes no standards other than we give six categories and some subcategories of areas where quality child care can be arranged and can be fulfilled.

Only if a State-imposed independent requirement on relative care would there be any regulation at all. And we have no right to interfere with whatever States want to do. Personally, I would not like to see those kinds of regulations. But if a State chooses to do so, they can. But this bill does not do so.

Majority Leader MITCHELL's modification makes several technical changes to clarify this intent, including the deletion of the contract provisions.

Additionally, the Ford-Durenberger language concerning the use of certificates for religious providers negates the red herring argument that grandmothers could not read Bible stories to their grandchildren and still be reimbursed with an ABC certificate.

Another argument that constantly crops up that is also false is that the ABC bill would require States to license child care programs in religious institutions.

Well, the bill is carefully drafted so that States set the categories of care to be licensed or regulated. A State that did not already require religious providers to be licensed would not be forced to do so upon passage of S. 5.

The so-called uniformity provision—over which there has been much confusion—States only that providers who are required to be licensed or regulated by the State are all subject to the same standards for their category of care. That is, a church-based provider accepting an ABC certificate under this bill would not be subject to more stringent standards than a church-based provider who did not receive ABC moneys, provided the State required licensing of church-based providers in the first place. And if they do not, well, then, there is no problem at all. And I do not think there is a problem anyway.

Mr. President, I understand the distinguished Senator from Arizona would like to speak on this matter and, of course, I would be happy to interrupt my remarks to enable him to do so. I yield the floor.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Arizona.

Mr. DECONCINI. Mr. President, I thank my friend and colleague from Utah for his courtesy and for his leadership. If he stays around here, his ears will burn because I am going to say some very nice things about the Senator from Utah. He knows I feel very strongly about my friendship with him.

Before I do that, Mr. President, I rise in support of the ABC bill. Today it is estimated that half the women in America have to leave their babies in child-care programs they do not trust. As a nation, we can do much better than this and we must.

Right now, in this country, 21 States, as has been pointed out, do not require criminal record checks of child care provides. As a nation, we can do much better.

Today, across these United States, almost 2 million children come home from school each day to an empty house. As a nation, we must be better.

This country is in the midst of a child-care explosion. We have all heard the numbers time and time again. Half of all mothers with preschool children are now in the work force. Their number will only get bigger each day. And so will the demand for decent, affordable child care.

In Louisiana, 9,000 families are on the waiting list for child care. In Tennessee, only 1 out of 5 infants who need child care can get it. In my own State of Arizona, there are 130,000 latchkey children with no child care. There is a national need in this country to make child care more available.

In a community near Chicago, 47 children were found being cared for in a basement by only 1 adult. One adult for 47 children—and half of those children were younger than 2 years of age. That program cost $25 a week—one-third of the cost of most child care in the community.

The bottom line is simply this: Those children were in that child-care situation because their parents could afford no better. The facts speak out loud and clear: There is a national need in this country to make child care more affordable.

In Florida, two small boys burned to death when they climbed into the family clothes dryer. On that particular day, their child-care arrangements had fallen through, and their mother was forced to leave the boys on their own at home. Make no mistake: There is a national need in this country for child care that is safe.

President Bush has called child care "the single most important issue arising from the changes in our work force." In poll after poll, Americans are saying that child care is not an urgent need. To repeat: The need is urgent—not one that simply needs to be taken care of when we all have time, but now.

Few of us dispute the need, Mr. President. That is no longer the question. The question now is: What will Congress do about it?

All of us know what the Congress did last year. We brought legislation similiar to this bill to the floor of the Senate, only to see that it was killed by a filibuster. How cruel that is—that we could have child care provisions now that would be part of our national policy and law, but we lost a year.

Now, we have a second chance, and we have an even better bill than before. Senator DODD, who has sponsored this bill and has labored long and hard to see it go through the process in the last Congress and now this Congress, deserves the great deal of thanks and gratitude that have been expressed on the floor to him. And I express the same gratitude.

The same goes for Senator HATCH, only perhaps in a particular way. ORRIN HATCH and I arrived here in the same year. In 1977, we were sworn in. We both were new Senators. We both served on the Judiciary Committee. We found much in common; we talked about family issues from time to time; we talked about child care more than 6 or 7 years ago.

Senator HATCH last year introduced his own bill. And there was some reluctance by many to join the Senator from Utah in a different approach from what the ABC bill was. He talked to me about it, and I could tell through his usual genuine way of wanting to find a solution to a compelling problem that I should join in support of his bill, and I did enthusiastically.

As a result, I would like to think that Senator DODD and Senator HATCH were able to forge together this bill before us today. There were some different views to begin with, some concern about standards, about States being able to evolve their own process. They put together a bipartisan bill in the best of spirits, realizing the importance of the underlying issue—as Senator HATCH has pointed out and Senator DODD time and time again—the family.

If we are really interested in the family, it is time we do something here without intruding and without mandating that a family alter its ways of living. But let us provide an opportunity. Senator HATCH has moved in that

leadership capacity together with Senator DODD.

I do not know how much has been mentioned about him here, but the Senator from California, Senator CRANSTON, started this process about 6 years ago. I recall a memo that I received from him talking about the need for a comprehensive study as to how to approach child care on a national basis—one that would be realistic, affordable, and safe.

I want to compliment the Senator from California for the effort that he has put in. There are many others—Senator KENNEDY, and many others—who have labored long and hard. Senator DODD and Senator HATCH have forged a bipartisan bill that gives greater flexibility to the States. This bill promotes more business involvement. It offers protection against liability. Most importantly, it gives parents more choices. The ABC bill not only encourages, but insists on parental involvement in child-care programs.

Mr. President, we have a great number of bills in the Congress that claim to be the best answer to the child-care problem. Many are tax credit proposals. One is a tax credit proposal by the President.

Now tax credits are important. They can help low-income families pay for child care. I support the tax credit incorporated in the Mitchell amendment.

I even introduced a bill that would grant a tax credit, on a one-time basis, to businesses for establishing a child care center on or near the workplace.

But, Mr. President, tax credits alone are not the answer. The only bill on the table—the only one—that addresses all three parts of our child care problem is the Act for Better Child Care Services.

More than a year and a half ago the Nation watched the rescue of Jessica McClure. Jessica is the young girl who fell down the well in Texas. But what most of us did not know was the Jessica was being cared for in an unlicensed day-care home—with 1 person caring for 9 small children. Jessica was lucky.

Not everyone is so fortunate. I heard a mother from Springfield, VA, testify how her young daughter had died in the home of a day-care provider. The provider had given Ashley massive doses of an antidepressant drug to keep her quiet. Other parents had seen Ashley tied to a high chair, but said nothing. They said nothing because the child-care provider had told them Ashley was a Downs syndrome baby. Ashley was 10-months' old when she died.

This should not happen, ever—not in Virginia, not in Arizona, not any place in America. But it does happen, and people who believe there is no need for safe child care in this country are burying their heads in the sand.

Right now, 32 States require no first aid training for child-care center workers. Seven States have no requirement that staff wash their hands. In 10 of our States children enrolled in family day-care homes do not have to be immunized. Parents want child care to be affordable. They want it to be available. But they also want it to be safe.

In a child-care center in Virginia toddlers are locked in the bathroom for talking. This does not happen occasionally, Mr. President. This is a matter of routine discipline.

In Maryland, toddlers in some day-care centers are hit on the bottoms of their feet for talking at nap time. They are routinely expelled for wetting their pants. Do you know what happens in some centers near the Capitol when a child is bitten by another child? The child who is bitten is encouraged to bite the other child back.

Now, Senators may say that this is unbelievable. My colleagues may say that it is outrageous—and indeed it is. I say it is another kind of child abuse that is going on in our Nation today.

When a nation says people need a license to cut our hair, but not to care for our children—that nation has its priorities backward.

When a nation requires that our sausage be inspected regularly, but not the facility that cares for our children—then that nation has perhaps lost its priorities.

The ABC will give us accountability, Mr. President, in caring for the most important resource we have. The ABC bill, if modified by the Mitchell amendment, will provide us with model standards for child care. These are not mandated standards. They are recommended standards in critical areas of health and safety and quality.

The States would be free to set their own standards within these categories. These are not national standards we are talking about. We are not saying that the Federal Government is going to mandate and force something down the State's throat or its legislature or its regulatory agency.

This is a carefully crafted bill put together by the Senators from Connecticut and Utah and others of us in order to be sure that the States have every opportunity to realize the importance of some safety, some availability, some constant direction in child care. These are not national standards that we are talking about. They are State standards set by the State at its own speed, according to its own needs and its own resources.

For those who may be shaking their heads and saying: "Wait a minute, we have heard about that before where Washington says, 'Don't worry, be happy, we will take care of you' "—I say, is a simple tax credit approach to this sufficient? Is this going to be the whole answer that we have? Or perhaps a grant program where we hand some money over to States and say, "Hey, do with it as you like?"

This is not quite what we had in mind.

Imagine being in charge of a day-care center, and a fire breaks out. How many babies do my colleagues think they could carry to safety?

Let me ask has any Senator ever tried to pick up a child of 8 months' old or 13 months' old and carried him around in his arms? Try it. I have tried it. It is hard to do, particularly if we are in a hurry and there is an emergency.

If anyone can carry more than two for the distance across this Chamber, he is a very, very strong person.

And yet, right now, in this country, 11 States allow five or more babies to be cared for in family day-care homes—by just one person—without any assistant. Eleven States allow this practice today.

Recently I got a letter from a constituent who criticized day-care centers because she said they are a hot bed for infectious diseases. Now I do not think the answer is to keep a child out of a day-care center if this is what you want. I think the answer is not to allow a day-care center to endanger the health and safety of our children.

This is precisely what the ABC bill tries to do. In order to be eligible for ABC funds, States must take some action to prevent and control infectious diseases. They must take some action to prevent child abuse, and to have adequate safety exits in case of a fire. These are not unrealistic expectations. They are common sense actions that could prevent tragedy.

I repeat, under the Mitchell amendment the States will be able to set their own priorities and move at their own speed. They will have 3 years from the date of enactment to put their standards in place. If a State does not measure up to the national recommended levels at the end of that time, it will not be punished; it will not be penalized. It would be eligible for an incentive grant to improve its child-care quality.

Eleven short months ago George Bush was on the campaign trail. Eleven months ago he pronounced child care "nothing short of a family necessity." He called on the States and the Federal Government "to provide additional resources * * * for a broader range of choices and higher quality child care."

The President used the word "quality." Now a tax credit alone will not give you quality in child care. But the ABC bill before us today shoots for this goal.

The American people have spoken out—and spoken overwhelmingly—for quality in child care. In a national poll taken just 2 months ago, 73 percent of the parents surveyed believed the Fed-

eral Government should establish and pay for child-care programs to "provide quality day care for children."

Mr. President, I want to thank a couple of people who have helped me in my efforts to support this legislation. One, of course, is my wife Susan, who is a social worker and has been involved in a number of efforts around the country and in my own State, who is one of the moving forces in the establishment of the Child-Care Center for Senate Employees. The National Council of Jewish Women, has worked hard, as have the American Academy of Pediatrics, the National Junior League, and the Catholic Conference—just to mention a few.

Lynn Kimmerly of my own staff, and others on my staff, have labored long and hard to see that a piece of legislation of this magnitude and with this sensitivity toward the States rights and the people's rights to make some decisions themselves can be before us today.

I urge my colleagues to vote for the ABC bill. We have a chance to pass a bill that can make child care more affordable, more available and safer. We have a chance to make a difference, a positive difference in the lives of our children. We have a chance to make a difference in this country's future. It is the future that, after all, is in very small hands.

Mr. President, this is an important piece of legislation. I cannot think of anything that has come before us in this Congress and maybe the last Congress that we should try to move more and strive to find a consensus. I doubt there are too many, even those who will oppose the Mitchell amendment to this bill, who really do not believe that we need to do something to promote child care. It is a matter of how you accomplish it.

Legislation is a matter of compromise. We all learn that here. Nobody, I do not believe no matter how powerful you may be here or think you are—gets exactly what you want. It is a matter of compromise and—putting together and that is the way it is supposed to work—so we have legislation that takes in these other views and then comes to the center. This is exactly what we have achieved in this bill. I compliment the managers of the bill and thank them for letting me speak.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to take a moment to thank our colleague from Arizona. He has been tireless in this effort. I have to go back a number of years when I first got involved in this issue—and the Senator is absolutely correct in identifying Senator CRANSTON as one of the people early on who tried to generate some interest in this subject matter. Senator DECONCINI has on every single occasion, without exception—and we have had press conferences, meetings, discussion groups on how best to proceed with this legislation—been there. We would not, I think, have moved as successfully as we have through the subcommittee and the committee to the floor.

I want to take this moment to thank him and also to thank Susan DeConcini. Susan DeConcini is an active force in her own right. In addition to being the spouse of our colleague, she has been a participant in major conferences all across this country. Every conference I have spoken to on child care, I look out in the audience and the first person sitting in the front row as a participant is Susan DeConcini. She has an active interest in this and has formed a coalition of parents across this Nation who are concerned about the future of our children and has done a remarkably good job of involving people, regardless of party persuasion, of political ideology, of geography, religion and bringing them together under the united effort to improve the quality of life of young people in this country.

One out of every four Americans is a child. As DENNIS DECONCINI said eloquently this afternoon, this Nation's future without question is in the hands of those 64 million Americans. Not because we have carved in the lintels of our great buildings the statements of our fearbears or the strong pronouncements of our Declaration of Independence or our Constitution. All of those are reminders of what this Nation's heritage is and the road signs of how we ought to conduct our affairs. It is people, each generation of Americans who sustains these values. If we fail to provide the generation of young Americans with the tools necessary to be educated, to be healthy, to be strong and to be informed, then we jeopardize those values. We make it possible for a demagog or others to erode those values and those principles.

What we are trying to do here with this child care legislation is to assist families and to assist children, and Susan DeConcini and DENNIS DECONCINI have been in the forefront of that battle for many years. I am honored that he is a cosponsor. I am honored he is a supporter, and I believe we will ultimately be successful because of his efforts. I am delighted with his statement today, Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I also want to compliment my good friend and colleague from Arizona. I have watched Senator DECONCINI through the years, and on so many issues he has been right. On this one he is also right again. I also want to compliment his wife Susie. She has been a great friend to me through the years. Early on in this particular battle she came to me and said she was willing to help in every way she possibly could because she appreciated some of the things we were trying to do with regard to alleviating these problems that families have with regard to child care. She is a very active, very noble, very good person. It meant a lot to me at that time and still does.

I personally appreciated the kind remarks of the distinguished Senator from Arizona because I do not know of many people whose remarks mean as much to me as his always do. He is a good friend, and he is certainly a stalwart in fighting for these particular principles that mean so much to his families in the State of Arizona and my families in the State of Utah and I think for all families throughout the country. I want to personally thank him for his kind remarks.

When we began this debate, I made some points about some of the statistics involved in the child-care battle. I think these statistics are stark and they are very, very important. I would, therefore, like to go into some more detail. Let me begin by saying that I start from the premise that it is better to have a parent in the home with the children. That is the ideal. Nothing comes close to that because parents know what is best for their children; they personally feel the anguish and the problems and the vicissitudes and difficulties and exhilarations and joys that the children have more than any other human beings. Of course, they are the ones who anguish so much if their children are not getting the very best that they can offer in this life. And when they have to work, it really adds an additional burden. So it is better to have that parent in the home with the children whether it be the father or the mother. In most cases, it turns out to be the mother. Either way, it is better to have a parent with the children during the daylight hours, helping them with their problems, there for counsel and advice, there to pave the way, smooth the way and to help them through this really rocky road of life.

But today that is not a reality in this society. When reality is different, I think we have to approach things from a realistic standpoint and try and resolve the problems. About 45 percent of all of our workers in this society are women. That is going to go 50 percent by the year 2000. Two-thirds of those women are either single heads of households, meaning divorced, widowed, or otherwise unmarried, or are married to husbands who earn $15,000 or less a year. They have to work.

What happens to those children left at home? Seventy percent of all women between the ages of 25 and 34 now work in our society; 70 percent. Those are the principal child-bearing

years in marriage. They are all in the labor force. By the year 2000, 61.5 percent of all women will be employed.

It is almost a necessity to keep our country going because our labor demographics are trending downward and the only way we can make it up with regard to quality is with women in the labor force.

Three-fifths of all new entrants to the job market and the work force today are women—three-fifths. Three out of every five jobs are taken by women today.

According to Labor Department data, the labor force participation of mothers more than tripled between 1950 and 1981. It rocketed from 18.4 percent to 58.1 percent in that 30-year period. Think about it, tripled.

In 1950, only 12 percent of mothers with children under age 6 worked. Today 57 percent of them do.

That is reality. That is what we have to face and we cannot just do it by conflicts on the floor. We have to resolve those conflicts. If anybody has worked hard to do it, certainly the distinguished Senator from Connecticut and I have done that. We may not have resolved all the conflicts, but we have certainly come a long way in trying to meet everybody's needs.

Of all the mothers with children under age 14, almost two-thirds of them are in the work force. Of all mothers with children under age 14, two-thirds of them are in the work force today. In 1984, just 5 years ago—and it is worse today—over 6 million families were maintained by single parents—6 million families with children were maintained by single parents. A 1982 Census Bureau survey found that 45 percent of single parents and 36 percent of low-income parents would work if child care were available at a reasonable cost. And you are going to find that we are going to need to have these people work.

In 1983, 6 years ago, there were between 5 and 15 million latchkey children. These are elementary school children that are latchkey children, and that estimate did not include the millions of preschool age children with parents in the work force who need child care services. So 5 to 15 million latchkey children who are elementary students in this country, and it does not include the millions of kids of preschool age, in other words, 1 to 4 years of age.

Just stop and think about it. Look at my home State of Utah. If there is any State that is pushing to keep a parent in the home with the children, it has to be Utah. I think all States are trying, but Utah more than any other State emphasize it is better to have that parent in the home. My home State prides itself in the family. The word "family" is the most important word in the State I think. Everybody there wants their children to be raised properly and to be supervised properly. And yet look at Utah. In Utah there are 214,600 children between the ages of 0 to 5, and 292,000 children between the ages of 6 to 13. Approximately 149,412 children between the ages of 0 to 13 need child care because their parents work and they have no relatives at home to care for them.

Utah's fertility rate is the highest in the United States. Thirteen percent of the population is under 5 years of age compared to 7 percent of the population under 5 years of age throughout the United States. We are approximately double the average fertility rate.

Utah's population is the youngest of any State in the Nation with an median age of 25.5 years compared to an median of 32.1 years in the United States. In Utah, 40 percent of our total population is under age 19, and yet of the total number of women in Utah, 59.9 percent are in the labor force compared to 56 percent for the United States. We are above the national average even though families are emphasized and having a parent in the home is major emphasis in our State. Utah's labor force increased 170 percent from 238,115 in 1950 to 641,756 in 1980. That was compared to an increase of 83 percent in the Nation as a whole.

Between 1950 and 1980, labor force participation rates for women in Utah increased dramatically from 25.2 to 52.4 percent, more than doubling in that period of time, a little over 30 years.

In 1987, 57 percent of our Utah mothers with children under 6 and 71 percent of mothers with children ages 6 to 17 were in the labor force. Nearly three-quarters, or 74 percent, of all employed mothers with school-age children age 6 to 17 and two-thirds, or 67 percent, with children under 6 worked full time. That is according to the Bureau of Labor Statistics in 1987, just 2 years ago. And it is worse today. Three-quarters of employed adult women are full-time workers compared with more than 9 out of 10 men. The number of years an average 20-year-old woman could expect to spend in the labor force nearly doubled in Utah between 1950 and 1977, rising from 14.5 to 26 years. In contrast, the work life expectancy of a 20-year-old man drifted down from about 41.5 to 37 years over the same period.

Women remain concentrated in traditionally female occupations or female occupational fields. In 1982, throughout the Nation, 99 percent of the secretaries, 96 percent of the nurses and 82 percent of the elementary schoolteachers were women. Among women, work life expectancy has increased faster than life expectancy and in 1977, a 20-year-old woman could expect to spend 45 percent of her life in the labor market, and that is up from 27 percent in 1950.

In 1987, there were 407,000 families in Utah. Utah's income per capita for 1987 was 11,246 compared to 15,340 on the average throughout the United States. In 1987, there were 39,000, or 9.6 percent, Utah families living in poverty. In 1987, there were 42,000 families in Utah with women heads of household—14,000 of them were living in poverty. That is 33.3 percent of the women who are heads of household and their children living in poverty.

In 1987, in Utah, there were 64,000 children living in families with women heads of household—33,000 of the children were living in poverty. In 1987, the total number of children living in poverty in Utah was 80,000 or 12.8 percent.

What about income of women in Utah? In 1979, 9,372 out of 33,422 female heads of families—28 percent—had incomes below the poverty level in Utah. By 1983, 13,700 out of 38,808 or 33.5 percent were poor. The median income of female heads of family in Utah in 1979 was 46 percent of that of male family heads.

Utahns who were male householders with no wife present with children under 18 had in 1979 an average income of $20,053. For females in the same situation the average income was $10,476 or just about half. Women are suffering today. Families are suffering today. Nationwide, after 1 year of divorce, a woman's standard of living decreases by 73 percent while a man's increases by 42 percent. The estimated 1980 median income of Utah women aged 15 and older with income is $4,012 which is only 31 percent of the median income of their male counterparts. This ratio has remained constant over the past 11 years, thus even though more women are working, their average moneymaking capability has not improved with respect to that of males. The estimated median income ratio of year-round full-time working women for 1980 is 54.5 percent of the median income for comparable males.

I might say it is noteworthy that women with 4 years of college have a median income equivalent to that of males with only an eighth grade education.

I ask unanimous consent that a table be placed in the RECORD evidencing that at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

UTAH'S 1980 MEDIAN INCOME BY EDUCATIONAL ATTAINMENT BY SEX, YEAR AROUND FULL-TIME WORKERS

Years of school completed	Median Income		Female to male ratios	
	Male	Female	Utah	United States.
Total, age 25+	$20,683	$11,117	53.7	59.9
8 years	12,444	3,382	67.4	60.4

UTAH'S 1980 MEDIAN INCOME BY EDUCATIONAL ATTAINMENT BY SEX, YEAR AROUND FULL-TIME WORKERS—Continued

Years of school completed	Median Income		Female to male ratios	
	Male	Female	Utah	United States.
9–11 years	15,940	8,024	50.3	60.1
12 years	18,982	9,712	51.2	59.3
13–15 years	17,689	10,418	58.9	62.0
16 years	20,251	12,455	61.5	62.3
17+ years	24,201	17,005	70.3	65.4

Mr. HATCH. There are many changes in the American family. The all-American family continues to be envisioned as dad at work, and mom at home with the children. Yet in 1980, less than 19 percent of families in the United States conform to this mode. The percentage of children in the United States with single parent households continues to increase from 19.1 percent in 1960 to 23.9 percent in 1987.

What about child care in Utah? Where are we there? There are 244 licensed child care facilities or centers in the State of Utah caring for approximately 18,000 children. There are 1,500 licensed family day-care homes in the State of Utah caring for approximately 12,000 children. Some State and Federal money is used to purchase day care for low-income families. Care is subsidized for approximately 7,500 children per month.

What about the salaries of those who give this care?

Based upon data collected in a survey of child care centers in Utah in 1988, the average salary paid to directors was $12,175 per year. Teachers earn an average of $4.08 per hour and teacher aides earn an average of $3.65 per hour. Forty-six percent of the care givers terminated their jobs last year, the majority of them because of low pay. So there is a high turnover in this industry as well.

Utah data on the income of family day-care providers is not fully available at this time. However, according to the National Day-Care Home Study of 1977, 87 percent of family day-care providers earned less than the minimum wage. Ninety-four percent of the family day-care providers earned wages below the poverty level. The National Day-Care Home Study showed that family day-care providers earn an average of $1.25 per hour with a weekly average of $73.92 per week. Those figures do not take the cost of food and supplies into account.

There is a lot you could say about this. The very least that anybody could conclude is, yes, although it is an admirable thing and a wonderful thing and the ideal thing to have a parent in the home with the children, that is not realistic today. It is also not relistic to think that all these kids are taken care of. I think it is an absolute disgrace that literally 5 to 10 million latchkey children have no adult supervision during daylight hours in the greatest country in the world. No wonder we are so drug-ridden, and no wonder they are so susceptible to the drug lords, the drug pushers, the pornographers, and those who foster and push juvenile deliquency and criminal activity.

I brought this statistic out last week; that is, 20,000 children, less than 4 years of age, have no adult supervision during the daylight hours. Again, how does a 1 to 4 year old take care of himself or herself? We cannot allow this condition to exist in this civilized society. We cannot allow this condition to exist in a society that provides for itself and its families. We cannot allow this condition to exist because of budgetary reasons at all.

I am known as a fiscal conservative around here. But there are things I would spend money on. This is one of them. It is worthwhile. In the end, it will pay off because in the end we will have less crime, we will have less poverty, we will have more educated people, we will be able to compete better, and we will be able to solve a lot of problems we would not otherwise solve if we continued to ignore these problems as I think this country has been doing for a number of years.

There is a real divisiveness here on the floor on whether there should be a tax credit approach, or whether a direct subsidy approach with block granting moneys to the States is the way to go.

I prefer both of them. For those who like the tax credit approach let us make that part of this bill. That is what the Bentsen amendment does. There are aspects of the Bentsen amendment I absolutely dislike. The fact of the matter is he has made a real attempt to try to resolve these problems with the refundable tax credit.

The President's approach is a very, very good approach. I like it. I think it is something that is worthwhile. It is something I would like to support. But do not knock the ABC approach as amended either, because it is a good approach, too. They both come at it from different ways, one directly, and the other indirectly. But both of them subsidize and both of them try to help with child care. One of them makes it child care, and the other makes it moneys to the family in the home.

I think it is very important that we perhaps put both of these in this bill, in the final bill that comes to the forefront because I believe both of them are extremely important.

But lest one side think they have all the answers compared to the other—and sometimes I get the impression that those who support their side think they all have the answers—let me make a few points on that. As much as I support it I recognize its limitations. Why should the tax credit approach be considered superior to this one? There are some good reasons. Under the President's approach he would take care of the mother who stays at home or the parent who stays at home as long as the other parent works. They would share in whatever child-care benefits occur. That is a nice idea. I like that idea. I wish we could amend our bill today to incorporate that idea. Maybe we will before it is all said and done.

To me that is the single most valid point that is made with regard to the President's approach, and there are others. The other approach is they give the benefit directly to the families, and they can do with it what they want. That is both a plus and a minus by the way, because although the benefit comes directly to the family it does not necessarily go out for child care. Under our bill it has to go for child care. Under the tax credit approach it does not necessarily go out to quality child care because there is nothing in that bill that would indicate that there is a question regarding quality. Under our bill we try to encourage more available child-care slots. As you can see, Utah has all this need, 149,000 students, but we only have about 30,000 slots. So it is apparent that we have to solve that problem some way or the other.

Let me just give some reasons why the tax credit approach is not the only way of solving this problem and maybe a limited way at best. No. 1, the amount of the credit that the President would have in his bill, or that I think the Dole-Packwood substitute that will be brought to the floor before this week is over will have in their bill, barely makes a dent in the true cost of child care. First of all, the average cost of child care in this country is $3,000 per year. That is a lot of money. Sometimes it will be a little lower but in some areas you pay a lot more too, up to $5,000 or $6,000 a year.

So the child-care tax credit approach barely makes a dent. It hardly makes a helpful contribution to the cost of child care but it is something. I have to admit, I prefer to have it rather than not have it.

No. 2, all tax credit bills, including the family earned income tax credit which both Senator DODD and I support, limit eligibility to young children. None of these bills help with the expenses of care for schoolage children, they only care for children up to age 4. The way you get more money is by having more children, but in order to have the maximum benefits you would have to have four children under the age of 4. That is a pretty hard thing to do in this day and age. Do not count on the maximum benefits from any of these tax credit bills.

You might have two or three children so none of the amount of the benefit goes up but it still hardly makes a dent in the true cost of the care of those children.

No. 3, unless use of the credit is restricted to child care such as the dependent care tax credit, it will not necessarily stimulate more slots or a greater array of choices of care. If the credit is restricted, then families with mothers at home would be automatically ineligible under this approach. So it does not attack the problem of availability as well as the ABC bill does.

No. 4, a tax credit, unless restricted to the child-care approach as meeting specific criteria, will not necessarily improve the quality of care available for what parents can generally afford.

While quality is a subjective term, most people agree that child care workers or family providers should know some basic things—first aid, for instance, and how to recognize the measles or chicken pox. They should have a clean and wholesome environment, proper toys and games, outdoor access, fire extinguishers, and so forth. I think most people will agree that those are minimum requirements.

You might ask why would I support a tax credit with some of these criticisms. Well, it is important. It is an unrestricted subsidy for families with young children. The ABC bill is a direct subsidy; the tax credit is an indirect subsidy. I think these families need and deserve a break, and the tax credit is a way of doing it, but do not be deceived; it is not a panacea for all day-care problems. I also predict that direct subsidy provided by any Federal program will stretch only to help the most needy and the tax credit will help pick up where the grant program leaves off.

So if we have both, I think we have the best of all possible worlds—a direct subsidy approach and indirect subsidy approach. So I look forward to hopefully coming up with the very best possible tax credit approach that we can possible have and going from there. That still comes back to the basic issue, and that is, if we believe in families in this country, we cannot continue to ignore the problems that families have.

If we believe in raising children properly, then we can no longer allow them to wander about unrestricted or unsupervised during daylight hours. If we believe that 20,000 children between the ages of 1 and 4 who have no adult supervision during daylight hours should have that supervision, then we have to provide for it. If we do not provide for it, then it seems to me we are opening up these children's lives to all kinds of perverse and evil influences that could really destroy them, and in the process hurt our society irreparably. That is why this debate is so important, and that is why we have been fighting so hard to try and resolve some of these problems.

I have a lot more to say about this in the future, but I notice that the distinguished Senator from California is here, and he would like to speak.

I yield the floor.

Mr. WILSON addressd the Chair.

The PRESIDING OFFICER (Mr. REID). The Senator from California.

Mr. WILSON. Mr. President, I thank my distinguished friend from Utah. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for a period of somewhat under 10 minutes, for the purpose of introducing a resolution.

The PRESIDING OFFICER. Hearing no objection, the Senator from California is recognized for a period up to 10 minutes, as if in morning business.

Mr. WILSON. Thank you, Mr. President.

The PRESIDING OFFICER (Mr. REID). The Senator from California is recognized.

Mr. WILSON. I thank the Chair.

(The remarks of Mr. WILSON pertaining to the submission of Senate Concurrent Resolution 48 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. DODD. Mr. President, I, at this juncture, suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KERREY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DIXON). Without objection, it is so ordered.

AMENDMENT NO. 198 TO AMENDMENT NO. 196

(Purpose: To provide that the chief executive officer establish and appoint a board that shall serve as the lead agency)

Mr. KERREY. Mr. President, I send an amendment to the desk to the bill under consideration, S. 5, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 198 to amend numbered 196.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, line 16, insert before the period the following: "or the State Child Care Board appointed and identified by the chief executive officer of the State as the lead agency under section 6(a).".

On page 21, line 15, insert before the period the following: ", or the State Child Care Board that is appointed by the chief executive and that meets the requirements of subsection (b), to serve as the lead agency.".

On page 21, between lines 16 and 17, insert the following new paragraph:

"(1) APPOINTMENT OF BOARD.—

"(A) ESTABLISHMENT.—The chief executive officer of a State desiring to participate in the program authorized by this Act shall, if such chief executive officer has not designated a lead agency under subsection (a), establish a State Child Care Board that shall be composed of seven members to be appointed by such chief executive officer with the advice and consent of the legislature of such State.

"(B) CHAIRPERSON.—The chief executive officer of the State shall designate a member of the Board to serve as chairperson. Such chairperson shall report directly to the chief executive officer and serve at the pleasure of such chief executive.

"(C) TERMS, VACANCIES, COMPENSATION.—The chief executive officer of the State, with the advice and consent of the State legislature shall determine the terms of office of the members and chairperson of the Board established under subparagraph (A), the method to be used to fill vacancies on such Board, and the compensation to be received by such members.

"(D) DUTIES.—The Board established under this paragraph shall act as the lead agency for the State for the purposes of this Act.".

On page 21, line 17, strike out "(1)" and insert in lieu thereof "(2)".

On page 21, line 22, strike out "(2)" and insert in lieu thereof "(3)".

On page 22, line 3, strike out "(3)" and insert in lieu thereof "(4)".

On page 26, after line 25, add the following subsection:

"(e) REDESIGNATION.—The chief executive officer of a State may modify the original decision concerning the designation of a lead agency if such chief executive determines that the original designation is not appropriate.".

On page 27, line 9, insert ", that shall be prepared by the lead agency or the State Child Care Board established under section 6(b)(1)," before "that is".

On page 27, strike out lines 12 through 15, and insert lieu thereof the following new paragraph:

"(1) LEAD AGENCY OR STATE CHILD CARE BOARD.—The plan shall identify the lead agency or the members of the State Child Care Board appointed under section 6(b)(1), the location of the offices of such Board, and shall contain a certification that the Board solicited input from the local advisory councils in preparing the plan.".

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, the amendment I offer to the child-care bill is a further attempt to give the States, who will be implementing this act, the flexibility that they need to implement this bill effectively. The States are the ones who will carry out the program under the ABC bill.

The Senator from Connecticut and the Senator from Utah previously conceded some changes to this bill that gave the States the ability to develop

the regulations under which this program will be carried out. They have attempted to overcome practically every objection with a concession. In this case, I think a reasonable concession saying to the States, not only will we give the Governor the authority to make the assignment to a department of social services or a department of health care or a department of public institutions or Department of Education, giving the Governor the authority to make those kinds of assignments, but also giving the Governor authority, if the Governor chooses to, to create a seven-person board, to appoint a seven-person board with the approval of the legislature to administer this program.

The reason that this amendment will help the States is it does something that I think is particularly important today, particularly given some of the arguments that I have heard on this floor in opposition to S. 5. It will elevate child care. It will open it up so we will begin to see it for what it is: Parents making a decision to work, needing to find someone who will care for their children, not having some of the other options that were referenced by people who are in opposition, finding themselves needing to go to a church, needing to go to a synagogue, needing to go to some other operation that is providing child care and to purchase child care.

What we I think, in this Nation need to do is elevate child care and bring it out in the open so we can see what it looks like in 1989. As I said in earlier remarks, parents are having difficulty affording the cost of child care. It is a terrible dilemma. It is no longer baby sitting. It is no longer parents simply saying I need to find somebody to watch my child for a few hours. It is care. It is trying to provide an environment in which that child can be fully nourished. Mr. President, today, that environment is inadequate.

A couple of days ago, the vice chairman of AT&T, Randy Tobias, gave a speech in which he talked about the problem of dropouts in the United States of America. Three thousand five hundred students drop out every single day school is in session—3,500 a day. Mr. Tobias calculates that is $240 billion of gross national product lost forever, not counting the cost of incarceration, not counting the cost of special care that is needed once those adults have found themselves unable to read, to write, to do the things that are going to be needed in our society. Two hundred and forty billion dollars. What ABC does is just get us started to helping parents provide that kind of environment that they want and that we need.

I hear people proposing tax credits as an alternative, rushing to find something they can propose and say, "We care about children, too." I do not object to the use of tax credits, although I think it flies in the face of an effort to keep our taxes simplified, and although I suspect that it is an effort to be able to stand and say, "We care about children," without actually respsonding with the dollars.

I do not object to the tax credit that is being offered, but, Mr. President, it will not reach many American parents who are making decisions about providing care for their children. This bill just gets us started. It deals with parents that are having difficulty affording it, but it will in no way deal with the reverse part of that dilemma, and that is that this reimbursement is still insufficient to provide the revenue stream that these child-care centers need to go out and hire the kind of professionals most of us would want to provide care for our children.

The United States of America, in my opinion, is behind other industrial nations in trying to deal with the changes that have occurred over a relatively short period of time. Increasing numbers of parents, for a variety of reasons, not just economic, not just social, but for a variety of reasons, are choosing to go to work, both mother and father, and placing their children in the care of someone else.

Mr. President, I see an urgency in the United States of America that has caused me to override many things about this bill that I would prefer to be changed. I have some misgivings about some of the standards changes that were made. I have some misgivings about the concept of a voucher. I have some misgivings about a variety of things, but in the end the urgency overrides all of that, and my hope is that the rest of this body will similarly look at the problem and see that the facts present a proper conclusion to act in support of this legislation.

This amendment simply gives the States one additional tool they will need in order to carry out this program well. It gives the Governors a sufficient amount of flexibility, the kind of flexibility I think they need, so the program can change, so that it does not develop into some encrusted bureaucracy that is difficult for parents to approach and difficult for politicians to accept, so that Goverors can keep it flexible, keep it moving, as the situation changes in front of them, as the citizens demand; it is not top down bureaucracy; it is the States in charge; it has a variety, not according to horizontal need but vertical care as well, according to the health of the individual.

This amendment, in my opinion, gives the States the real flexibility they need, not taking away from the urgent need of the money as well. In the end, Mr. President, it seems to me this still gets down to a question of are you willing to appropriate money. Are you willing to spend $2.5 billion in authorization. And none of us believes that that total will be approriate. Are you willing to put that amount of cash on the line for America's children or do you see the problem to be of such little urgency that you are not willing to spend that amount. I wish the amount was larger, Mr. President. I wish the program was more comprehensive. I wish the program attempted to provide an even better environment at as early an age as possible, because I believe it is earnestly needed not only for America's children but for its economic and social health as well.

I urge adoption of the amendment.

I thank again the Senators from Utah and Connecticut for considering this amendment. I yield the floor.

Mr. DODD. Mr. President, I commend the Senator from Nebraska for his amendment. We reviewed it. This is, as I understand it, an option Governors would have, and one of the main points we have tried to emphasize in this legislation is flexibility in options, choices, choices for parents particularly, but also some flexibility for Governors. One of the reasons why the National Governors Association supports this legislation, why our colleagues from Virginia and Nebraska, both our colleagues today, as former Governors, are cosponsors in support of the legislation, is because we do maximize flexibility and allow them to set up a seven-member State child-care board to develop and implement the State child-care plan. Governors would thus have the option of designating the lead agency or establishing a State child-care board. The amendment would not modify any of the bill's other provisions for developing and implementing a State child-care plan.

This board will be appointed by the Governor and confirmed by the legislature.

The Governor would designate a chair of the State child-care board who could report directly to the Governor.

The Governor would notify his or her initial decision on whether to go with designating a lead agency or establishing a State child-care board, total flexibility of the Governors, and I support the amendment and urge its adoption.

Mr. HATCH. Mr. President, I commend the distinguished former Governor of the State of Nebraska, who has had to deal with some of these problems directly and who has vast experience as a result of his experience as Governor of the State of Nebraska, for this amendment. I think it is a helpful addition to this bill and certainly does provide more flexibility, which is what the distinguished Senator from Connecticut and I and others have tried to do. So it fits right in line with all of those principles and we certainly have

no objection to it on this side and urge its acceptance.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 198) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KERREY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Are we in a parliamentary position where we can just speak to the subject matter without any time limit?

The PRESIDING OFFICER. The Senator is advised that the Pastore rule has expired and the Senator is free to address his remarks.

Mr. DOMENICI. Mr. President, I yield myself as much time as I use.

Let me first say to those who have worked so hard on the so-called ABC bill which is now before the Senate in a substantially modified manner from that of its original purpose and original authorization, that knowing how hard they worked and the dedicated commitment that they have to this subject matter, I wish I could be here on the floor today saying that I could wholeheartedly support the approach to filling one of our very significant needs in this country, but I cannot.

I hope in just a few moments that I could outline in a general way, without a lot of detail and specificity, some of the philosophical notions that bother me about the bill and, as I do that, to sort of indicate in my own way what I would hope we would ultimately be able to do.

Let me first start by saying I do not think there could be any question that one of the most significant problems in the United States today is the issue of child care for the very young children in families across this land, in particular those families that have to work and yet have young children.

It is obvious that the population has changed in our country, the work force has changed in our country, and it also is obvious that our country had for a long, long time a very significant profamily policy exhibited in our Tax Code. We do not have to go back very far. This Senator is 57 years of age. I had four sisters and I can think back and in fact did that, looked at the Tax Code of the United States and the policy in the Tax Code with reference to an incentive to help mothers and fathers raise those children.

I might say right at the start of this discussion on my part that we used to allow a very significant tax deduction for dependent children. We still have one. In fact, in the Tax Code we reformed we raised it a bit over what it was a few years ago. But my research would indicate that over the years it has suffered significantly. It is approximately 29 percent per child off what it was when we had the most profamily Tax Code in the United States.

Those do not mean anything—29 percent, 39 percent, 50 percent. But what I am saying is that we had an American policy that said if you are a wage earner, whether both are working or, as it was in the days that I was a child, predominantly one-worker families, we had a very significant amount of money that we said you earn and you do not pay tax on because we want to help you raise your children. Whatever you call it, it has been significantly diminished over the years.

So it seems to me that whenever we talk of child care we ought to think about that first and we ought to say how can we help the parents of children who are earning some money, one working or two working, or a single head of household working, but the first thing that comes to my mind is how can we for those working Americans give them more resources to spend as they see fit for their children and in particular for that much-needed commodity today called child care.

So one might suspect right at the beginning that the Senator from New Mexico is most interested in a debate which for the first time is going to put the Federal Government into a policy-making position, into a sensitizing position, into either a disincentive or an incentive as the case may be to help mothers and fathers or single heads of households have more money in their pockets for the work and the dollars they earn to make some choices about their children and the child care that they need.

I happen to believe that the first major American debate on that issue ought to focus as much on policy as on somebody's idea about programs, and I start with the policy, at least from my standpoint, that says most parents will make good choices about taking care of their children. Most parents who work will make good choices if we can given them more resources. I opt philosophically and policywise to say let us let them make more choices.

Having said that, one would immediately know that in spite of a need, I do not favor the Federal Government setting up a fund, whether it is $5 billion as ABC started, or $1.7 billion, as it is today, for the first year of an appropriated amount which gets divvied up to the States for government to decide who gets subsidized and what do we build or help build institutionally to help these children.

I start with the notion that we ought to first address the issue of helping most parents with this child-rearing issue by giving as many of them as possible the right to choose and money to choose with.

Having said that, it is interesting that the reason for this so-called ABC bill and the reason it did not go in the direction that I am speaking of was because most people around who promoted it and who were excited about it had a notion of national standards.

I am not trying to exaggerate the case because I know my good friends are waiting here who are now on a new ABC bill and they will say, "Wait a minute, we don't have national standards in this bill anymore." But, Mr. President, the whole idea of it in its beginnings was out there in America they are not taking good care of little children and if we set national standards, whip, there will be a national miracle and they will all be taking care of children well because we are going to tell them how.

I submit that if you now take the national standards out what do you need a national bill for.

So to those who are going to stand up and say, "Well, the Senator from New Mexico is mistaken; the new ABC has no national standards," I wonder how they held all the coalitions who wanted the national standards because States did not do it right. There was even an implication that parents do not do it right; we ought to set national standards. There certainly was more than an implication that the hundreds of neighborhood centers, where one person stayed at home and cared for three or four children from the neighborhood for hire sometimes, where grandmothers and aunts and others took care of their related young children, were inadequate. That was the argument.

Now, it would be said we do not have standards in this bill. We have a model. And I assume, without reading all of the detail, which I will do this evening, that that model is now mandated on anybody. I understand the model does not even give anybody a preference; if they adopt the model standards, they get the same amount of money.

Well, then, if we are doing all that because we wanted to make everybody do it better, then it seems to me the motive is to eventually tell people,

States, counties, regions, localities, churches, that they have to follow this model. I do not believe it is in their just because we take some pride of authorship and put in a bill what a model looks like and here it is for you to look it.

So my second point is that we do not need any national standards but there, unless, unless we are sending a signal to the American people, to the Governors of the 50 sovereign States of the United States, that we have models and we are starting a program and we are going to pay for the program—"we," the Federal Government.

My second objection is that we are not going to pay for the program. The $1.7 billion could not be followed in this authorization bill with year No. 2 at $1.7 billion and year No. 3 at $1.7 billion and year No. 4 at $1.7 billion because, Mr. President, the cost is so big that nobody knows what it is. So in the usual manner when we really want to say we are eventually going to spend all it takes or fool somebody into thinking well, this bill is $1.7 billion in the first year and thereafter such sums as are necessary.

Mr. President, if I were a Governor of one of our sovereign States and this proposal were offered to me—and I see the distinguished occupant of the chair a former Governor—I would come to Washington and say:

> Now, look here, boys. We've seen this before. You give us the standard and you say they will be bound by it. Are you going to give us the money to pay for it?

I think some Governor said that. And I think they got rid of the standard and said, "Let's call it a model."

Mr. President, my rough estimate—and I am going to err on the conservative side—if you want to fulfill the implied goals of ABC for the American people, and you are certainly sounding like you are going to, and you do not need $1.7 billion. You do not need $5 billion. You do need $10 billion. I think you need no less than $20 billion. And that is almost arithmetic.

Unless you intend to subsidize these children, over 6 million who qualify as poor children, unless you intend to subsidize them in a very, very tiny amount; unless you are going to leave it in the hands of bureaucrats to pick and choose perhaps 1 out of 10 the first round and then maybe 2 out of 10 the second round, and then you are not even going to come close to middle-income America even though the bill says you can, at the State level, have your own plan and subsidize beyond poverty.

Mr. President, there are 21.6 to 22 million children in the United States who would be entitled under normal circumstances to child care, the kind of children we think should have it, either in their own home because they are still babies or in some center or neighborhood or with grandma or Aunt Jane, or the like. Of those, over six are poor. And I just ask you where 70 percent of $1.7 billion is going to take us down that line of helping them. I do not think very far.

If we once send a signal through the appropriation of dollars that we are in the child-care business in a big way, Mr. President, everybody in this Senate ought to be prepared to say we either are never going to live up to the implied promise or we better be prepared to double, triple, and quadruple that amount of money unless we think it is such a marvelous program, in spite of its enormous costs, that the States and the localities are going to find money growing on trees and finish the job. So I believe tax credits would be a much more appropriate way.

So my first concern is standards or models versus choice at the local level, and incentives to have the States do their own modeling and their own standards, versus appropriating and/or tax incentives in their hands of families and parents, dollars in their pockets for choice.

In that regard, choice of where you have your children taken care of has another resonance to it besides where you have your baby children taken care of. The other choice is, do you want to work? Should both spouses have to work to get some help from a new Government policy on child care? That has been given a new name—homemakers or stay-at-home parents.

I submit to you that we should not adopt in the U.S. Senate—not today, not next week, never—an American policy on child care that is motivated by encouraging parents not to stay at home or, put it the other way, that does not at least treat those parents who choose to stay at home with their children with equal dignity with those who want to work.

I am not here suggesting that this policy is going to be that big a motivator in that arena one way or another. But I say to my fellow Senators, if you have been home or if you have been communicating with people at home with children, if you have not heard from a young mother who will walk up to you and say, "I heard about child care. Mr. Senator, I choose to stay home and take care of them. How do I get helped?", then you are not talking to the people. And there are far more than we are led to believe that are making that choice. Because, Mr. President, the demographics and statistics we are reading are about the whole profile of working parents. Boil it down to working parents of small children and you find there are a lot of them staying at home, a much higher percentage than the percentage that are not working, because many are choosing that.

So my second concern is that we ought to maximize a national policy of equal treatment for the parent who chooses not to work. If one works and one stays home, we ought not say, "Since you choose to take care of that child, we are not concerned about your child care needs."

The amount of money we have in a tax incentive program can be regulated as to the amount by capping the income level of such parents, so we are not subsidizing the parent who stays home whose spouse is earning $100,000. They made that decision but they are not necessarily sacrificing economically. We do not intend in any tax incentives to help that situation. You draw a line based upon income.

So obviously appropriations to the States to spend money on either centers or selective children versus tax incentives, putting money in the hands of parents, is one philosophical difference. I choose the latter.

And then with reference to the latter, there are two ways to do that. One is to give the credit to those only that work. I choose to say any bill we produce here ought to do both. For those who are working and paying something, we ought to give them a refundable-type tax credit for the costs. For those who choose not to, they ought to get a new refundable credit or some addition to the earned income tax credit which is already part of the tax lore of this country.

My next point has to do with so-called sectarian centers. That is sort of another word for religious centers.

Mr. President, we are going to get, in the ABC bill, ourselves into the quagmire of the U.S. Supreme Court having to make interpretations as sure as we are here of whether any subsidy is legal even if we use certificates of payment. We are going to get into the courts because of our Constitution. And that is because the United States today has about 50 percent of the eligible children in this country already being taken care of in sectarian centers.

I use the word "sectarian" because those expert on this issue have tried to distinguish betweeen sectarian and religious. I assume that means that if the Catholic church, the Presbyterian church, the Baptist church, or the Jewish synagogue merely uses their basement for little children in day care and that is it, that is sectarian. But if there is some religious overtone to it, it is religious.

I believe if we do down that path we are inviting litigation; we are inviting discrimination; we are inviting excuses when it comes to whether we are going to help or not. I do not think we have to get in that mess.

We are told that only 6 to 8 percent of the little children are in religious centers, because somebody is drawing that nice little line that in that Presbyterian church, if you are teaching

about Christ that is religious, but if the crucifix is on the wall and you are not teaching about Him, it is not religious.

I really think we are in for nothing but opportunities for the bureaucrats to make excuses. Do we really want our States to go out there and start saying: well, we will monitor the First Baptist child-care center for a month and we will report to the second in charge in our labor and health and human services department and they will report to so and so and finally the Governor will decide if that is religious or not? I do not think we need to do that.

I think we ought to put some money in the hands of the mothers and fathers whose little children are in those centers and let them say it is my right to spend that money in behalf of my child how I would like and according to my desires. If I choose a very ritzy, nonreligious center, fine. If I choose one in the basement of the Holy Rosary Catholic Church that does not look very good but I like it, give them some money to pay for it.

My last point is going to be on homemakers or stay-at-home mothers. I want to repeat this argument one more time. Mr. President, not only do I believe that we should not discriminate or choose in those situations and move the pendulum of financial support in the direction of one or the other, but, rather, I believe we should make sure that we do not send a signal that you are going to be economically disadvantaged if you choose to stay home, if one spouse chooses to stay home. I move we should send a positive signal that if we can help make that choice by making it a little more economically significant and helpful, we ought to do that.

So I think the bill before us, the ABC bill, and the proposed tax credits that are going to be added to it—as I understand they are the two that came out of the Finance Committee—they are very deficient, from the standpoint of my philosophy and my ideas.

The Senator from New Mexico thinks we ought to get into this field. I do not think a $3 billion a year bill, eventually, on the tax side, is too big. I think we can afford it. I think the Finance Committee has made tax adjustments to afford it. But I conclude that to start down the path of direct Federal subsidies in the name of producing better centers—that was the issue—and then to say we are not going to have national standards—because obviously they would not sell—but then to say we will have model standards is nothing more than getting the big Federal foot in the door without the resources to open the door. And just as sure as the foot is in the door, the model standards are going to mean something more than "this is kind of nice." The States and those providing are going to live up to them eventually. If not on the first round, on the second round of money.

We are going to find an accidet in the day-care center and we are going to say if we had had these great national standards, it would not have occurred.

My last remarks are going to be addressed to the issue that seems to be accepted as if it were living truth and that is that there is a desperate shortage of facilities, these new handsome centers that we want to build with all these marvelously trained people taking care of the little children of America.

Mr. President, the truth of the matter is that it is resources that are lacking, not centers. Centers are growing each year, almost exponentially.

If we put more money in the hands of parents to make the choice, then facilities, neighborhood facilities, other kinds, will continue to grow in number. And the business sector will begin to build them, too. And you will have parents who work in those businesses getting their refundable tax credits and saying to their employer: We will match you. You put it in the business or with three other businesses, we will give you our refundable tax credit, and centers will keep pace. But we will do it in a much better American style than the notion of many, who started ABC's idea, and it was: We will tell you all how to do it. We know best.

My last comment, for those who are the least bit concerned about reality, let me just tell my version of why we are not going to be able to carry out over 6 or 8 or 10 years, the goals of the ABC bill. Senators are not going to find enough men and women to be trained to be the expert caretakers provided for and assumed and hoped for in this law. It is an absolute impossibility to look at the United States and say: We are going to have almost all our little children in centers with national standards and licensed personnel, without asking where will the people to be licensed come from?

There is a teacher shortage today. Almost every vocational training program around is short of personnel.

Nurses are in short supply. Those who would teach people who are disabled are in short supply.

Some would say if the Federal Government would put a little more seed money into training we would have more. But when you push them in hearings and say: are you not really saying there are just not enough people around to do this? The answer is, normally: you are right.

Mr. President, we should just think. Out there across America, with the goals of a bill that says we are going to appropriate money for subsidies for individuals and facilities with the primary objective being licensed personnel and licensed centers will be where the little children are, and just ask how many hundreds of thousands will be needed to do that. Frankly, I think the neighborhood might be better. The young mother who elects to stay at home and take in three neighborhood children to make additional money might be better than what we are talking about. In fact, it might be better, with additional resources, for the child or two children to stay with Uncle Tom and Aunt Jane in the neighborhood, and get paid for it.

There are plenty of people who say that is not good for America. We have to take care of them in some more orderly manner. Well, I, frankly, believe choice as to work; choice as to how to take care of them and who takes care of them, will get more appropriate response from parents for the dollar we spend in tax credits than the success rate over a long period of history, of Government knowing best and being the caretaker.

I just cannot believe that we really are going to be committed to the billions of dollars that we are talking about here over years to try to take the choices and make them more single minded and more directed at government taking care of things. I just do not believe it will work. I think it is a step in the wrong direction. I hope we do not do it. I hope the President lives up to his commitment and says if you do it that way, I will not sign it. I hope he stands firm if we pass a bill like ABC. By the time it gets out of the House, it might be twice as big. If not, next year it will be twice as big or is assumed to be. We will just have government in the business more and more.

I think there is a better way. I think we will find out about it in the next few days.

Several Senators addresses the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Kentucky [Mr. FORD].

Mr. FORD. I thank the Chair.

Mr. President, I rise today in support of the Mitchell substitute amendment to S. 5, the Act for Better Child-Care Services. This amendment contains the Ford-Durenberger compromise language regarding religious providers. Before I explain why this provision is so important, let me take a moment to recognize the efforts of Senator DODD. His tireless efforts on behalf of this Nation's childern have not gone unnoticed and I commend him for his work.

The ABC bill represents a major step toward expanding affordable and safe child care for low-income working families. But the original legislation went beyond what the constitution requires to ensure separation of church

and state. Section 19(a) of the original bill would have effectively prohibited churches from providing services under ABC thereby denying parents the choice to place their child in a religious setting.

I know that several Washington-based religious organizations take exception to this, but they are wrong. I met in Kentucky with the Kentucky Catholic Conference and the Kentrucky Council of Churches. Their message to me was clear. The churches in Kentucky could not participate in the ABC bill as reported. Let me point out, Mr. President, that one-fifth of all child care slots in Kentucky are filled by religious providers. Nationwide that figure is between 30 to 40 percent. We cannot afford to jeopardize the care these institutions provide. If we are truly serious about increasing the availability and affordability of child care, we must ensure the ability of these institutions to participate in the ABC program.

The original bill would have required religious-based care, whether purely secular or not, to remove all religious references, context, and perhaps even symbols and garb. It also would have required that all other providers, including grandmothers, aunts, uncles, and other in-home providers who receive assistance under this bill, completely sanitize their environment. Under these conditions, parents would be denied the right to choose religiously oriented care. Quite frankly, Mr. President, I do not believe that the Constitution of this great Nation, founded on the principle of religious freedom, requires us to go this far.

The Ford-Durenberger compromise language in the Mitchell substitute would allow parents to exercise their religious freedom with regard to child care for their children without running afoul of the establishment of religion clause of the first amendment. Families would have the freedom to choose whatever type of care they want for their child, including, if upheld by the courts, religious care.

The Ford-Durenberger compromise language is contained in section 121 of the Mitchell substitute. Specifically, this provision exempts certificates from the bill's prohibition against religious use of funds. In order to ensure that the exemption for certificates rests on constitutional grounds, two conforming changes are included in the Ford-Durenberger compromise. First, the requirement in the original bill that a written contract be signed between providers which receive certificates and the State, has been deleted. Second, the provisions of the bill referring to placement of a child with a provider are amended to refer only to services funded by contracts or grants.

It is significant to note that in recent years, the Supreme Court has differentiated between direct and indirect funding of services provided by religious institutions when examining establishment clause cases. The court has allowed forms of indirect assistance, such as tax benefits, vouchers and grants, to flow to religious institutions if the aid has been received purely due to individuals' choices. A recent analysis of the constitutionality of such an approach, prepared by the nonpartisan Congressional Research Services, concluded that excluding certificates from the bill's prohibition against religious funding would not seem to violate the establishment clause.

Obviously, Congress cannot authorize spending in violation of the Constitution. We believe that this language does not do so. To make it clear that Congress does not intend for this provision to create an unconstitutional use of funds, language has been added stating that no financial assistance provided under the ABC title of the act can be used in any manner inconsistent with the Constitution. This is not a statement of opinion; it is a statement of fact. Ultimately, the courts will resolve this issue in a manner consistent with the competing interests of the first amendment.

There are those that would argue that a bill funded only by tax credits does not raise this problem. But that approach ignores the fact that for very low income families, even an advance funded, refundable tax credit will not cover the full cost of child care. In those situations, the States will need federally appropriated money for grants to parents or providers to make up the difference. And if we are to have grants, it is important to note that once parents receive that subsidy even the tax credit assistance is tainted so that parents cannot choose religious care.

There are also those who would oppose this provision for fear it would be a foot in the door to tuition vouchers in education. As a staunch opponent of tuition tax credits and vouchers, I flatly reject this argument. I strongly believe in our public education system, and do not support weakening it through Federal tax credits or vouchers for private schools. But I feel just as strongly that while child care may have an educational component it should not be an extension of our public education system. Those hours outside of the regular school day belong to the child and his or her parents. And if parents are unable to be with the child during that time, then they should have the right to choose the provider that most closely reflects their own values and beliefs.

We should not have to take God out of the lives of a 6-week-old child in order to comply with the Constitution. The same Constitution that protects us against Government establishment of religion through separation of church and state also guarantees us the free exercise of religion. I do not believe that our Founding Fathers intended for those two freedoms to be mutually exclusive.

The Ford-Durenberger compromise allows parents to choose the most appropriate care for their child, even if that care is religious in content. We are confident that the courts will affirm this approach, which is both constitutionally sound and consistent with a child-care policy that gives parents the ultimate responsibility for choosing who cares for their children.

I commend my colleague, Senator DURENBERGER, for his leadership on this issue and for his assistance in drafting this compromise. I thank Senators DODD and KENNEDY for their efforts to reach this agreement, and I thank the majority leader, Senator MITCHELL, for including this provision in his substitute amendment. I encourage my colleagues to support this important provision.

Mr. President, I ask unanimous consent that a letter from John Bush—that is a good name—of the Kentucky Council of Churches and a letter from Ralph Quellhorst, of the Indiana-Kentucky Conference of the United Church of Christ, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

KENTUCKY COUNCIL OF CHURCHES,
Lexington, KY, June 14, 1989.

Hon. WENDELL FORD,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: I want to thank you for meeting with Ken Dupre and me regarding certain concerns around the Act for Better Child Care (S. 5). As I told you then, it would not be possible for Kentucky Council of Churches to reach a consensus in support of this bill without changes to the provisions of section 19a.

Your amendment addresses these concerns specifically. Without your amendment, we believe that the smaller Protestant congregations, as well as churches with a more comprehensive interest in education, would not be able to participate in the provision of child care under S. 5. Reading the committee report, I find it very clear that the intent of section 19a is to require that the facilities and environment be sanitized of all religious symbols, references and content. That circumstance is unacceptable to most of our constituency in Kentucky.

Further, as it stands, S. 5 deprives parents of the right to choose to provide child care in a specifically religious setting. While we do not believe that religious content should be forced on any child or family, we do believe that parents should have a choice among child care providers which may or may not be entirely secular.

As I understand the Ford-Durenberger Parental Choice Amendment to S. 5, you are addressing this concern in a constitutionally permissible manner.

While I understand that the view I have expressed varies from that of the National Council of Churches and a number of Washington-based denominational offices, I would point out that the constituency of Kentucky Council of Churches is more diverse than theirs since our membership includes both the Roman Catholic Church and several evangelical Christian bodies.

Thank you for your support for increased child care. This is a vital issue to families, churches and social institutions. It must be addressed by the Congress in ways that provide the greatest variety of services possible.

Sincerely,

JOHN C. BUSH,
Executive Director.

INDIANA-KENTUCKY CONFERENCE,
Indianapolis, IN, June 7, 1989.

Hon. WENDELL FORD,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: I continue to believe that the Better Child Care bill is still a very important bill before the Congress. I do believe that it will go a long way to help poor income families.

I do, however, want to offer a correction to my last letter. After being informed more fully about certain amendments to the bill I want to support the Ford Durenberger Parental Choice amendment. This amendment provides for church groups to offer care for pre-school and after school care but not care during the regular school educational process. While I do not support use of certificates for educational times, I do believe that use of certificates for child care for pre-school age and after school programs and other child care such as home care is helpful. Further information has convinced me such a provision is not unconstitutional.

I encourage you to support the bill and this amendment to section 19a. Thank you also for hearing my point of view one more time.

Sincerely,

RALPH C. QUELLHORST,
Conference Minister.

Mr. FORD. Mr. President, I also ask that an analysis by the Congressional Research Service, dated May 9, 1989, be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, May 9, 1989.

From: American Law Division.

Subject: Constitutionality of Possible Amendment to S. 5 Removing Certificates From § 19(a).

This is in response to your inquiry regarding a possible amendment to S. 5 to remove child care certificates from the strictures of § 19(a). More specifically, you asked about the constitutionality of such an amendment under the establishment of religion clause of the First Amendment. We have not seen the language of the proposed amendment, and so this analysis is necessarily tentative. But an amendment simply excluding certificates from the scope of § 19(a) would not seem to violate the establishment clause.

The establishment of religion clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion . . ." To guide the determination of whether a particular enactment violates the establishment clause, the Supreme Court has devised and generally employs a tripartite test:

"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster 'an excessive entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 603, 612-13 (1971).

In applying this test to various public aid programs benefiting religious institutions, the Court has drawn two critically important distinctions. First it has drawn a distinction between religious institutions that are pervasively religious, i.e., that are devoted to inculcating religious faith, and those that may have a religious affiliation or identity but are not devoted to religious indoctination.[1] Second, it has made clear that a distinction can be made between public assistance that flows directly from government to religious institutions and public assistance that flows to religious institutions only indirectly, i.e., that gets there only as the result of an intervening choice by the primary recipient of the assistance.[2]

Direct assistance to religious institutions or programs, it has held, must be limited to "secular, neutral, and nonideological purposes."[3] Where the institution or program has not been pervasively religious, the Court has found aid so limited to be constitutionally permissible.[4] But direct aid to pervasively religious programs or entities the Court has found to be largely precluded by the establishment clause either because the aid would inevitably have a primary effect of advancing religion or because the government monitoring of its use would excessively entangle government with the religious institution.[5]

Indirect assistance such as tax benefits or vouchers, however, the Court has not found necessarily to be so constrained. Four decisions by the Court are particularly pertinent in this regard—*Committee for Public Education v. Nyquist, supra; Sloan v. Lemon*[6]*; Mueller v. Allen*[7]*;* and *Witters v. Washington Department of Services for the Blind, supra.* The gravamen of these decisions appears to be that indirect assistance programs will not pass muster under the establishment clause if their design virtually guarantees that the assistance flows largely to pervasively sectarian entities. But where the design of the program is genuinely religiously neutral and does not dictate to the immediate beneficiary (the taxpayer or voucher recipient) where the assistance is to be channeled, the program will be upheld as constitutional notwithstanding the fact that even pervasively religious entities may be benefited.

Nyquist involved, *inter alia*, two complementary programs enacted by New York to help the parents of children attending private elementary and secondary schools. A tuition grant program reimbursed low-income parents earning less than $5000 a year at the rate of $50 for each elementary school child and $100 for each secondary school child attending private school for whom the parents paid tuition. A tax relief program permitted parents not receiving a tuition grant to take a deduction from their gross income for each child attending a private elementary and secondary school in an amount that varied according to income. Parents with incomes of less than $9000 a year could deduct $1000 for each such child, with the deduction gradually declining to $0 for parents earning $25000 for more. The deduction had no relation to the amount of tuition paid but provided an amount of tax savings comparable to the amount of the tuition grants.

The Supreme Court held both programs unconstitutional, 6-3. With respect to the tuition grant program, the Court noted that such aid could not be given directly to sectarian schools, because the aid was not limited to secular use and thus would subsidize and advance the religious mission of the schools.[8] The fact that the aid was disbursed instead to parents, the Court held, was a factor to be considered but was not itself dispositive. More critical were the facts that aid was available only to the parents of nonpublic school children and that more than 85 percent of the private schools attended were pervasively religious in nature. As a consequence, the Court held, "the effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions,"[9] The tax relief program, it said, was no different: "In both instances the money involved represents a charge made upon the state for the purpose of religious education."[10] It made no difference, the Court stated, whether the program was denominated a tax deduction or a tax credit: "Insofar as [special tax] benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions."[11]

Sloan v. Lemon, supra, involved a similar tuition grant program enacted by the State of Pennsylvania. Parents who paid tuition to nonpublic schools were entitled to receive grants of $75 for each child in a private elementary school and $150 for each child in a private secondary school. The grants were available to all such parents, regardless of income, and more than 90 percent of the private school attended were religiously affiliated. The Court held the program unconstitutional, 6-3, saying "we find no constitutionally significant distinctions between this law and the one declared invalid today in *Nyquist*."[12]:

"The State has singled out a class of its citizens for a special economic benefit. Whether that benefit be viewed as a simple tuition subsidy, as an incentive to parents to send their children to sectarian schools, or as a reward for having done so, at bottom its intended consequence is to preserve and support religion-oriented institutions. . . . We hold that Pennsylvania's tuition grant scheme violates the constitutional mandate against the 'sponsorship' or 'financial support' of religion or religious institutions." [*Sloan v. Lemon, supra*, at 831-33.

In both *Mueller* and *Witters*, on the other hand, the Court upheld the programs in question as constitutional. *Mueller* involved a tax relief program enacted by the State of Minnesota under which parents could deduct from their gross income a broad variety of expenses incurred in educating their children, including tuition, nonreligious books and instructional materials, transportation, lab fees, gym clothes, and course materials. The deduction was limited to $500 for each elementary school child and $700 for each secondary school child. In holding the program to be constitutional, 5-4, the Court cited three factors. First, it said, the Minnesota scheme was a "genuine tax deduction," and it noted that the courts traditionally give broad deference to legislative classifications in the tax area. Second, and "most importantly," it said,

". . . the deduction is available for educational expenses incurred by *all* parents, including those whose children attend public schools and those whose children attend

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Footnotes at and of article.

nonsectarian private schools or sectarian private schools. . . . 'The provision of benefits to so broad a spectrum of groups is an important index of secular effect.'" *Mueller v. Allen, supra,* at 398, quoting *Widmar v. Vincent,* 454 U.S. 263, 274 (1981).

Finally, it said, Minnesota reduced possible establishment clause objections "by channeling whatever assistance it may provide to parochial schools through individual parents";

"It is true, of course, that financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children. It is also true, however, that under Minnesota's arrangement public funds become available only as a result of numerous, private choices of individual parents of schoolage children. . . . Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no 'imprimatur of state approval' can be deemed to have been conferred on any particular religion, or on religion generally." *Id.,* at 399.

The dissenters argued that notwithstanding the facial neutrality of the statutory scheme, most of the benefits would flow to the parents of children attending sectarian schools because the bulk of the deductions would be claimed for tuition at private schools and 96 percent of the children in private schools attended religiously affiliated institutions. But the majority rejected the argument, stating "we would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law." [13]

Finally, *Witters v. Washington Department of Services for the Blind, supra,* involved the vocational rehabilitation program of the State of Washington. The program provided assistance, *inter alia,* to visually handicapped persons "to overcome vocational handicaps and to obtain the maximum degree of self-support and self-care." An otherwise eligible blind applicant sought assistance to enable him to study at a private Christian college in preparation for a career as a pastor, missionary, or youth director. But the State denied him aid on the grounds it would violate the establishment clause. The Supreme Court unanimously reversed and held that it would not. Two factors, it said, were critical. First, it said, "any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients." [14] The program, it observed, permitted training to be secured at institutions of all kinds, public and private, sectarian and nonsectarian, and it was in no way "skewed" toward religious training. Secondly, it stated, there was no evidence that "any significant portion of the aid expended under the Washington program as a whole will end up flowing to religious educaton." [15] The program was simply not designed "to provide desired financial support for nonpublic, sectarian institutions." As a consequence, the Court concluded, "we think the Washington program works no state support of religion prohibited by the Establishment Clause." [16]

The Court's opinion in *Witters* made no mention of *Mueller.* But five members of the Court authored concurring opinions to make clear their view that *Mueller* was directly relevant to the case, even though *Witters* involved a grant rather than a tax benefit. As Justice Powell [17] wrote with respect to whether the vocational rehabilitation grant had a primary effect of advancing religion.

"*Mueller* makes the answer clear: state programs that are wholly neutral in offering educational assistance to a class defined without reference to religion do not violate the second part of the *Lemon* v. *Kurtzman* test, because any aid to religion results from the private choices of individual beneficiaries. . . .Thus, in *Mueller,* we sustained a tax deduction for certain educational expenses, even though the great majority of beneficiaries were parents of children attending sectarian schools. . . .We noted the State's traditionally broad taxing authority. . . .but the decision rested principally on two other factors. First, the deduction was equally available to parents of public school children and parents of children attending private schools. . . .Second, any benefit to religion resulted from the 'numerous private choices of individual parents of school-age children.'" *Witters* v. *Washington Department of Service for the Blind, supra,* at 490-91 (Powell, J., concurring).

Thus, the critical element in these decisions does not appear to be whether the program involves a tax benefit or a voucher. Nor do the decisions appear to hinge solely on the fact that the benefits are channeled initially to parents. Instead, the critical issue appears to be whether there is a genuinely independent decisionmaker between the government and the ultimate beneficiary of the assistance. If the design of the program, as in *Nyquist* and *Sloan,* virtually requires that the assistance be channelled by the initial recipient to pervasively sectarian institutions, the program appears likely to be held unconstitutional. If, on the other hand, the design of the program does not dictate that the assistance be employed at pervasively sectarian institutions but provides a genuine choice to the initial recipient, as in *Mueller* and *Witters,* the program appears likely to pass muster under the establishment clause, even though pervasively sectarian institutions may be among the ultimate beneficiaries.

S. 5 would permit States funded under the bill to subsidize a board variety of child care services either by making grants to, or entering into contracts with, eligible child care providers, or distributing child care certificates to the parents of eligible children. According to the report of the Committee on Labor and Human Resources,[18] providers eligible for assistance would include "nonprofit and for-profit organizations, schools, community-based organizations, units of general purpose local government, employers, close relatives of eligible children . . ., and churches and synagogues that offer nonsectarian services." [19] That nonsectarian requirement derives essentially from § 19(a) of the bill, which proivdes that "[n]o financial assistance provided under this Act shall be expended for any sectarian purpose or activity, including sectarian worship and instruction." No assistance under the reported version of the bill, including certificates, in other words, could be expended for child care services that were religious in nature.

Under the foregoing interpretation of the pertinent cases, an amendment to S. 5 to remove certifcate assistance from the sectarian use prohibitions of § 19(a) would appear to be constitutional, even though pervasively religious child care providers might be among the ultimate beneficiaries of such assistance. If S. 5 dictated to the parents who received the certificates that they be redeemed only at pervasively sectarian child care providers, the amendment likely would not pass muster under the establishment clause. But S. 5 does not appear to so dictate. Estimates suggest that church-related child care comprises no more than a fourth to a third of center-based care, and it seems reasonable to assume that much of that is nonsectarian in nature. Moreover, the universe of choice available to a certificated parent would also include group home providers, family providers, businesses, public educational institutions, and community-based organizations. Thus, the scheme would not seem to have an inherent bias toward religious child care but to be religiously neutral. As a result, "any aid . . . that ultimately flows to religious institutions [would do] so only as a result of the genuinely independent and private choices of aid recipients." [20]

The one constitutional issue that might still be raised about the amendment, however, and that is not fully resolved by existing judicial decisions concerns excessive entanglement. S. 5 defines a "child care certificate" as something that is issued only "pursuant to a written agreement between the State and an eligible child care provider" providing for the use and redemption of certficates. In other words, the State would have to enter into a certificate use and redemption contract with providers wanting to participate in the certfiicate program. In addition, S. 5 would apply to such providers its full regulatory scheme, including applicable State and local licensing and regulatory requirements and the Federal standards to be developed after the bill is enacted. Whether these regulations, as applied to the pervasively sectarian child care providers that might participate in the certificate program, might excessively entangle government with the religious institutions is uncertain. Excessive entanglement is a matter of degree and in some instances may implicate the free excercise clause as well as the establishment clause. Generally, the Court has not found it to exist except where there has been a "comprehensive, discriminating, and continuing state surveillance" of publicly funded activities on the premises of prevasively sectarian institutions.[21] Moreover, it has upheld the application of certain kinds of regulations to sectarian institutions.[22] Nonetheless, in the absence of a decision involving the kinds of regulations that might be imposed under S. 5, a question might be said to exist.

I hope the above is responsive to your request. If we may be of additional assistance, please call on us.

DAVID M. ACKERMAN,
Legislative Attorney.

FOOTNOTES

[1] Compare, e.g., *Committee for Public Education* v. *Nyquist,* 413 U.S. 756 (1973) with *Roemer* v. *Maryland Board of Public Works,* 426 U.S. 736 (1976).

[2] Compare, e.g., Lemon v. Kurtzman, supra, with *Witters* v. *Washington Department of Services for the Blind,* 474 U.S. 481 (1986).

[3] *Committee for Public Education* v. *Nyquist,* supra, at 780.

[4] *Bradfield* v. *Roberts,* 175 U.S. 291 (1899); *Tilton* v. *Richardson,* 403 U.S. 672 (1971); *Roemer* v. *Maryland Board of Public Works,* supra; Bowen v. Kendrick, 108 S. Ct.—(1988).

[5] *Lemon* v. *Kurtzman,* supra; *Committee for Public Education* v. *Nyquist,* supra; *Wolman* v. *Walter,* 433 U.S. 230 (1977); *Grand Rapids School District* v. *Ball,* 473 U.S. 373 (1985); *Aguilar* v. *Felton,* 473 U.S. 402 (1985).

[6] 413 U.S. 825 (1973).

[7] 463 U.S. 388 (1983).

[8] "In the absence of an effective means of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral, and nonideological purposes, it is clear from our cases that direct aid in whatever form is invalid." *Committee for Public Education* v. *Nyquist*, supra, at 780.

[9] Id., at 783.

[10] Id., at 791, quoting from the lower court decision at 350 F.Supp. 655, 675 (1972).

[11] Id., at 793.

[12] *Sloan* v. *Lemon*, supra, at 830.

[13] *Mueller* v. *Allen*, supra, at 401.

[14] *Witters* v. *Washington Department of Services for the Blind*, supra, at 487.

[15] Id.

[16] Id., at 489.

[17] Justice Powell, it might be noted, authored the Court's opinions in Nyquist and Sloan but also joined the Court majority in Mueller.

[18] S. Rept. 17, 101st Cong., 1st Sess. 1989).

[19] Id., at 42.

[20] *Witters* v. *Washington Department of Services for the Blind*, supra, at 487.

[21] See, e.g., *Lemon* v. *Kurtzman*, supra, *Meek* v. *Pittenger*, 421 U.S. 349 (1975); *Aguilar* v. *Felton*, supra.

[22] See *Bob Jones University* v. *United States*, 461 U.S. 574 (1983) (imposition of racial nondiscrimination requirements on tax exemption afforded religious school held not to violate free exercise clause) and Tony and Susan Alamo Foundation v. Donovan, 471 U.S. 290 (1985) (application of recordkeeping and reporting requirements of Fair Labor Standards Act to religious foundation held not to precipitate excessive entanglement).

Mr. FORD. Mr. President, I yield the floor.

Mr. GORTON. Mr. President, my dear friend, the respected senior Senator from New Mexico, has shared with me on a number of occasions the thoughts which he expressed on the floor a few minutes ago. Indeed, we have discussed in detail each of the concerns which he so eloquently shared with this body.

In that respect, at least, there is no way that I can add to or improve upon the comments which he has made or the conclusion which he has reached except to reemphasize his argument.

The debate in which we are engaged with respect to S. 5 is not a debate over the desirability of a Federal policy with respect to child care. In a time of a rapidly changing economy and a constant increase in families with either both parents working or the only parent in single-parent family having the necessity to work, few issues are of so great a concern among parents and those who sympathize with parents across the United States of America than child care.

That there should be Federal policies to enhance the ability of such parents to find appropriate care for their children is beyond debate. Both sides see a challenge. Both sides agree that the challenge must be met.

Nevertheless, in spite of the profound amendments which have been engrafted onto S. 5 and to its predecessor in the last Congress, there are deep differences in the philosophies and attitudes with which the two sides approach this debate over child care.

The first of those differences arises over the functions of the Federal Government in setting standards under which approved child care shall be provided. The predecessor of the ABC bill in another Congress set out a wide range of mandated Federal standards for the provision of child care, whether based in child care centers, in religious institutions, among one or more of the potential children.

Because the setting of Federal standards has proved unpopular enough and controversial enough, it has been constantly watered down in succeeding versions of this bill, to the point at which S. 5 in its present form simply calls for model standards to be encouraged by the Federal Government in one way or another. Nonetheless, the philosophy remains the same, that there is some wisdom in the Federal Government with which it is appropriate to impose upon States, local governments and child care providers, or at the very least to provide incentives or strong suggestions to conform to that "wisdom." On the other side, the philosophy is simply one that the best set of regulations are those which are locally imposed and those which are chosen by parents as they look at the choices available to them with respect to child care.

Paradoxically, we hear a great deal of debate in connection with availability. One of the goals of all parties yet the stiffer the standards and the more the Federal interference in those standards, the less available child care will be, particularly informal child care in the homes of relatives or in small cooperative groups.

I am inclined to believe that even the model standards remain in the ABC bill because the concept of Federal standards is so vitally important to those who originally wrote the bill and because they feel that however innocuous these model standards may be, they can lead in the future to Federal standards which are both more thorough and more directly enforceable.

The second and perhaps even more profound differences between the two basic approaches to this debate is whether or not the Federal Government should undertake an obligation to pay for child care either directly or indirectly to the provider of that care or whether the appropriate and best Federal Government participation should be to help parents make choices and to pay for child care, aiming that help and assistance at parents in lower income groups to a large extent.

The ABC bill as it appears before us here, of course, does not meet the need which it is perceived to meet throughout the country for the direct payment of child care. Any alternative proposal involving tax credits will not be able to provide enough in tax credits sufficient to cover all of the costs of all of the people who genuinely need help with respect to child care. Nonetheless, the difference between a tax credit, refundable or otherwise, and a direct or indirect payment by the Federal Government is a profound one and has to do with the degree of faith we have in parents to make their own choices in life and with respect to child care.

The third difference is in connection with the treatment of parents who choose to care for their own children.

In the ABC bill these families are ignored. In some tax credit proposals they have been ignored as well. It is the view of this Senator as it is of his friend, the Senator from New Mexico, that we should not even indirectly discriminate against parents who choose to care for their own children. The Federal Government should not express a preference as to whether parents should choose to care for their own children or have another person care for them while they work.

Whatever tax credit system is proposed, it ought to be equally available to those who choose to work and those who choose to stay at home to care for their own children, and perhaps the children of others.

The fourth difference is the difference addressed by the Senator from Kentucky in the last set of remarks before this body: the impact of these alternatives on the provision of care in religious institutions, and/or with a religious content. It is my understanding from the distinguished junior Senator from Oregon [Mr. PACKWOOD], who has been at the forefront of this debate, that roughly only 7 or 8 percent of all child care in the United States at the present time has a consciously systematic religious content. Yet that 7 or 8 percent represents hundreds of thousands of parents making a conscious choice about the influences which they wish to play upon their preschool children.

Another 30 percent or even more of child care is provided in religious institutions which may have some incidental religious content.

From the very beginning, the primary supporters of the ABC bill have resolutely set their heads against providing what they would consider any aid to religion, direct or indirect. Only at this last moment have they recognized that without at least a bow in the direction of the religious sensibilities of our people do they have any chance of winning a debate in this body, and so they have agreed to the amendment by the Senator from Kentucky [Mr. FORD]. Yet, to paraphrase in part, I think the Senator from Kentucky "doth protest too much."

The amendment he has proposed falls into one of two categories in the veiw of the Senator: either it will be effective and judged to be unconstitutional, or it will be ineffective in allowing the kind of freedom of choice which exists at the present time for

those who wish their children to have child care with a religious content.

Those of us who are on the other side and believe primarily in the use of tax credits simply do not face that dilemma. We do not have to write pages of small print in our statute or amendments to allow the fair choice on the part of the parent to choose secular, quasi-religious or fully religious child care for their children. The tax credit goes to the parent and not to the provider, and thus freedom of choice will not only be protected but enhanced.

Even in the current bill, those provisions which relate to discrimination, to religion, and the like, very carefully include with them a severability clause. That way, if any of the provisions which attempt to protect freedom of choice with respect to religious content of child care are found to be unconstitutional, the rest of the bill nonetheless remains in effect.

I predict that many of the most staunch and systematic proponents of the ABC bill from its beginning will be among the first to challenge the religious provisions in this bill and attempt to get them thrown out in court. Those who are sincerely concerned about that freedom of choice should support an alternative.

When it comes right down to it, there is one great difference between these two basic approaches. One emphasizes the choice of parents, enabling parents to be able to find and to choose for their children the kind of child care they wish, whether in a formalized institutional setting, in a church basement, in their own homes or in the homes of neighbors or friends or relatives, it emphasizes choice. and a trust in the ability of parents to make the best choice for their children. It is the antithesis of the alternative, a proposal which relies on the State both to decide and to administer the type of child care provided for our children.

Recognizing that neither proposal is completely adequate, the Senator from New Mexico, and I agree with the side offering to parents the right and the ability to make their own choices, enabling them to make those choices somewhat more easily than they can now, and we disagree with the alternative which, to exactly the extent it is effective, substitutes its own judgment for the judgments of parents.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I have enjoyed listening to the parts of the speech of my distinguished colleague in which he states that he dislikes parts of the ABC bill, but apparently likes the tax credit approach. I have said time after time that the tax credit approach has some merit. It has some definite qualities that I think would make anybody want to support a tax credit approach if it properly meshes with the direct approach we are taking under ABC. But what the critics seem to fail to understand is the ABC bill has some very great merits, too.

I think we ought to at least answer some of the questions that have been raised by the distinguished Senator from New Mexico as well as our friend and colleague from Oregon.

For instance, Senator DOMENICI said benefits to families for children under the Tax Code have eroded about 29 percent over the years. And restoring those benefits ought to come first. Well, I do not disagree. That is one reason I am a cosponsor, as is Senator DODD, of a tax credit approach.

As a matter of fact, I am a cosponsor of the bill introduced by Senator DOMENICI which has a great deal of the former Hatch-Johnston bill in it. In fact, almost all of these bills have taken ideas from the Hatch-Johnston bill which was the first child care bill filed early on in this whole battle. We are very proud of that fact. We do not have any claim of authorship. We are happy to see that many people like the ideas that we put into that bill. The ABC bill has adopted a great number of those ideas. I think virtually everybody admits those are the ideas that are cost effective and will work.

So we are all in agreement. That is one reason why we are coming up with these child-care approaches—to stop the erosion of benefits and moneys to American families. The Tax Code has eroded. But that is not an argument against the ABC bill, and I am not sure the distinguished Senator from New Mexico intended it to be.

Two, as I understood the argument of the Senator from New Mexico it was that he would oppose setting up a fund for the Government to assign the choice for child care and not giving the choice to parents. Let me tell you something. If I thought the ABC bill was that, that we were setting up a fund so government could assign what happens to children in families, I would not be supporting it. I am, however, a strong supporter of the ABC bill as currently amended in the Mitchell amendment. We have resolved a lot of those problems, and parents will have a choice under the ABC bill. What is amazing to me is that many of my conservative colleagues say, throughout many debates on many subjects that we need to have State and local control of these things; that all wisdom does not repose in the Federal Government; that it tends to become too bureaucratic; that there are lots of problems with the Federal Government; and that we do not want them imposing their will upon us in the States.

Well, if ABC does anything, it turns over the control of all of these funds to State and local governments. As a matter of fact, there is only one official that is appointed, the currently existing official at the Department of HHS, whose sole responsibility is to make sure these funds are distributed to the States and that other matters within the bill are carried out, none of which are offensive to the States or place any onerous or bureaucratic burdens on the States or the families.

I do not think there is much of an argument there. It could not be based upon the bill that we are discussing right now, and that is the Mitchell amendment, which is the modification to the original committee amendment. This was a very good bill to begin with. But it is improved by the Mitchell amendment. A number of us have participated in helping to bring about those improvements.

Further, we have heard a lot of talk about national standards. Now that we have reduced the standards to purely State and local standards, which I do not think anybody can refute at this point, we are hearing that the very fact that the Federal Government is involved, they are going to ultimately wind up being Federal standards. Well, you cannot have it both ways.

The ABC bill did initially prescribe Federal standards. But we have completely accommodated our colleagues, because we have concluded that a majority of our colleagues believe that Federal standards is not the way to go, that we ought to leave it up to the States to set the standards because each State and region has their own particular difficulties and problems. But, the minute we do that, they come back in and say that even though we now have only State and local standards, the fact that we are passing a Federal bill might lead to Federal standards again.

Well, one reason I am a cosponsor on this bill—and I am working very hard to support the distinguished Senator from Connecticut, who has done a marvelous job trying to accommodate everybody—is because I want to make sure that those standards remain State and local standards. Yes, in this bill we provide for six categories of help for things like first aid, recognizing chicken pox or measles, having some outdoor facilities, being able to have clean facilities, having appropriate toys, health and safety standards, minimum health and safety standards that the States can set within those categories. And what we are saying here is that those standards will be set by the States.

I intend to stick with my position with this bill, and I do not think anybody is going to override it under the circumstances, and I do not believe anybody is going to come in here and push Federal standards at this point.

Mr. DODD. Will my colleague yield?

Mr. HATCH. Yes.

Mr. DODD. I commend the Senator from Utah for what he is saying. I, too, listened to our good friend from New Mexico talk about standards. I had one sense that he was sort of upset at the fact that we had done exactly what many people advocated, to allow the maximum flexibility at the State and local level, which is what we did and why the National Governors Association is supportive of the legislation.

Let me add another element that I think gets forgotten when we are talking about standards. Standards in the area of child care—somehow, as if this is an area where no one ought to be setting standards—we set very tough Federal-mandated standards for the elderly, which came out of the Finance Committee a few years ago. One could argue that they are two of the most vulnerable populations, the child and elderly, standards under Medicaid. Standards, in a sense, have been historic, in terms of Federal dollars being spent.

We understood, as the Senator has indicated, that the repository of good sense and judgment regarding child care does not necessarily reside here in Washington. So we are allowing the States to do that. But the notion, somehow inherently—that standards are inherently evil, I think there is more of a notion of that, regardless where they come from.

Mr. HATCH. Will the Senator yield on that?

Mr. DODD. I will be glad to.

Mr. HATCH. I believe most parents want basic standards. The Lou Harris poll shows 90 percent of all people who responded to that poll wanted standards for their children. They want minimum standards, and as a matter of fact, they listed quality, which really involves standards, as their top concern with regard to child care.

States, with input from their citizens and parental advisory groups, can develop those appropriate standards any way they want to. This bill does not tell them how to do it; it sets categories that anybody would agree with it. Frankly, now that we have gotten to this point, as the distinguished Senator from Connecticut says, they come in and say, well, but you are probably going to go beyond that and impose Federal standards later anyway. If we cannot do it now, we are not going to impose them later. I would have fought this bill, if all it were going to have were Federal standards.

Mr. DODD. If the Senator will yield, one other point. They talk about the model standards, to allow parents unannounced access to the child-care centers. About 10 States in this country right now prohibit parents from showing up at the child-care center, to walk in and see how their child is being treated during the day. You think of standards being a burden somehow. Some of the standards we are talking about here are a great asset and benefit to families so they can go in and find out what is going on. Imagine a child-care center saying to parents "You have no right to show up at any point during the day to see how your child is being treated."

If you only have a tax credit approach, you never get to that issue. We do not mandate it. We set it as a model standard, encourage States to allow parents to have access in those situations. But if you abandon that part altogether and exclusively rely on the Tax Code, you never get to that issue at all; I point that out. And there are health and safety standards. How many parents are qualified electricians or plumbers who can walk in and say that this is a safe building, putting aside the issue of whether or not the people who are working there are qualified. Is this a safe building for my infant child to be in for 8 hours of the day? Most people are not experts in those areas. They cannot make those decisions. It is impossible for them to do it. Are we being onerous because we suggest there ought to be a model standard that says that minimum health and safety standards must be in place? Does that not help parental choice rather than confound it, complicate it?

If you had to go in and say what kind of paint did you use on the wall, is there lead in that paint, how do I know there is not lead in that paint? What sort of plumbing facilities are they? Are the electrical facilities protected; can children get electrocuted? They do not know those things. It is unfair to ask American families to be competent in all these areas, as they take their infant child, their infant child and leave it with a stranger, because they have to work for 8 hours a day, 5 days a week, as many weeks as required in the year for them.

We are saying: Give parents a choice. Give them a choice, and do not ask them to make impossible choices. They should not be asked to make impossible choices. That is all we are talking about here, and leaving it up to the States to decide what those standards are. Maybe we will talk about these standards, and they are written with the parents and families in mind, not Washington, not some State capitol at all, but with parents in mind, what helps them in that choice and decisionmaking process.

I apologize for interrupting my colleague from Utah.

Mr. HATCH. I appreciate the comments you have made. They are right on point. The Senator from Oregon suggested that the model standards that we provide for in this bill exist in order for liberals to put pressure on State and local governments to raise State standards to the level of national standards or the model standards.

My response to my friend from Oregon is: So what? I do not think it is our place to cut off the debate within the States on what their State status should be. The Senator from Oregon is exactly correct; the model standards are there to stimulate discussion and self-examination within the States about the quality of child care provided. That is why we put them in there.

If the Senator from Oregon is correct that those model standards are the camel's nose under the tent, and that the Congress will eventually be asked to make them mandatory, or if the Senator from Washington is correct, then I am going to be the first in line to oppose that legislation. I do not think there is any question about it. The fact is that the model standards are talking points, and there will be pressure on those developing those standards to make them reasonable so the States will adopt them—and most States already exceed what are likely to be the model standards.

What we are concerned about are some of the States that have no standards at all. Everybody admits we ought to have some standards in child care when we are dealing with the lives of our children. It does not take much effort to realize that that is so. And most States have standards. Most States will have more standards than the model standards will include, but they will be there as a beacon for people to look at. They are going to come from the best minds in child care in this country.

So I think it is a red herring to keep raising the standards issue since we met what I think are the desires of the vast majority of Senators on this floor that basically the States will have total carte blanche to do whatever they want to do with regard to standards.

Also, if I heard the argument correctly, the Senator from New Mexico said the cost is so large that if the ABC bill is passed, the authorization will just run out of control. He said the States cannot live with the ABC bill of only $1.7 billion; they would need much more than that. I ask, is the Senator from New Mexico advocating that we make this an entitlement? If so, his projections are probably rather modest or conservative. But we have carefully drawn this so it is not an entitlement. It is not an entitlement.

We do not claim that we are going to help every family in America. We are not making the outrageous claim that we are going to help every family in America that is eligible under this program. As a matter of fact, that is one reason I do support the tax credit in addition, because it will be a little extra help to the parents as well.

But under the ABC bill, States can target assistance. A tax credit by itself takes a scatter-gun approach that we sort of sprinkle a little bit of money out there and hope that it does some good. We do not even know if it goes for child care. That is fine with me. I am glad to do that, hoping that it does go to child care. But the fact of the matter is that with the ABC bill, we are able to target some of the money to solve the problem. We are not totally willing to just scatter the money and throw it out there to the wind and say, "We hope that you use it for child care, but if you don't, it is all right anyway."

Mr. DODD. Mr. President, will my colleague yield on that point as well?

Mr. HATCH. I am glad to yield.

Mr. DODD. He has again touched on a point that I think is extremely important here because our colleague from New Mexico talked about choice. If you are a working family with not a huge income, one of the most important elements in choice in child care is the ability to have the resources financially when you need them. You are not in the position where your disposible income is so large that you can afford to wait until next April 15 or sometime thereafter to collect back from the Internal Revenue Service that which you have expended up to $500 under the alternative proposal, in child care expenses. If your income is around $12,000 or $13,000 a year and if you have two children who need child care because you are working and are a single parent, put it in that category, a single parent, let us use that example, child care costs on the average run around $3,000 per year, actually if you take the statistics as provided in terms of mean cost, on cost, the numbers even when parents with no child care expenses are averaged in, the mean annual amount paid by parents is $2,280 a year. What is worse is the lower a family's annual income, the more money that family is likely to pay for child care services.

This is a Lou Harris survey done for the Phillip Morris Corp. The categories of families most likely to be poor and most dependent on their child-care arrangements—blacks, Hispanics, single mothers, and those in large cities—not only pay well above the national average, but more than those earning between $35,000 and $50,000 a year.

I suspect the reason for that is the lack of availability in some of these areas. So the choices are not great. One of the things we try and do is encourage expansion of child care services.

So you have to wait for the tax credit, and I am for a tax credit as a feature of this thing. But if you are put in a position to say, well, you must only have tax credits, I think what we have done here is try to put together two proposals so that it can work for families in this category. If you only have the tax credit and you are making an income of $12,000 a year with two children, that is $6,000. Or even use this statistic here. Say it is $5,000 a year. That is off your gross income of $12,000. And then to say, I am going to give you back $750 of that $5,000 cost provided that you now get off welfare and go back to work, I think it unrealistic.

I think people are not going to be able to wait the year in order to get the money back from the Internal Revenue Service. They need the money when they have the cost, and one of the features obviously of the ABC bill is that 70 percent of the funds go directly to parents when they need the cost at that very low-income level and the tax credit folds in, because we do not necessarily have to pay all of that child care cost, and the tax credit the following year when you get your credits back can offset the remainder of that cost. So it dovetails very neatly.

Mr. HATCH. And with the limited amount of tax credit you are not sure they are going to get $750 either.

Mr. DODD. That is true. I am giving the maximum case.

Mr. HATCH. What I am saying is if you assume the maximum case.

Mr. DODD. That is the maximum example from the alternative you offer.

Mr. HATCH. If you assume the maximum it is not enough.

Mr. DODD. That is an average.

Mr. HATCH. If you assume what is likely to occur because of the limited amount of dollars that really can be targeted for this, it is going to be just a small dent in the total overall cost of child care.

Mr. DODD. And you do not get it when you need it.

Mr. HATCH. What bothers me is—I admit that the tax credit approach really appeals to me, but it is not nirvana. It is not the final solution because it is only a small dent in the overall cost of child care, and the distinguished Senator from Connecticut is abolutely right.

There is a lot of misunderstanding with respect to the 70-percent requirement for direct assistance under our bill.

Mr. DODD. If my colleague will yield, I have one other point, which I think is worthwhile. There is not a single State in the United States that uses the State tax system to support child care. It is interesting, not one—there are only six States that do not have a State income tax. But of the 44 States that do, not one single State in this country uses the tax credit system to support child-care services.

They have drawn the conclusion that it just does not provide the kind of assistance when people need it, so they have gone for the direct support option. I merely point that out to my colleague as a good example of what States have already encountered.

I say that as someone who still believes that the tax credit feature we have added to this is vitally important for the full effectiveness of this legislation.

Mr. HATCH. We both support tax credits.

I mentioned before I am pleased to be a cosponsor of the President's child care tax credit proposal. Senator DODD and I have our own family earned income tax credit approach. I cosponsored a bill with Senator DOMENICI and other colleagues on this side of the aisle that contains a tax credit for families with young children. I agree that a tax credit can be a real boon to families, but it is not the total answer. Tax credits alone cannot solve this problem.

As we said first, the amount of money involved would not even provide a major dent in the cost of child care.

So the proposal which I presume that the distinguished Senator from New Mexico and the distinguished Senator from Washington are advocating is that which will be proposed by the minority leader sometime tomorrow that would at best add a grand total of $1,000 to the pockets of low-income families. That may sound like a lot, but in order to receive this maximum amount, a family would have to earn between $7,143 and $8,000 and the credit begins to phase out at that income level.

Then a family would have to have four children under the age of 4 in order to get that. Probably not too many American families would fit that criteria.

Finally, even the least expensive child care can be expected to cost between $2,000 and $3,000 per year per child.

Work it out. If a babysitter charges a rock bottom rate of $1 per hour for a 9-hour day, that is $9 per day; multiplied for a 5-day week, that is $45. Assume child care is needed for 50 weeks each year, that is $2,250 per year for one child.

The additional tax credit of $500 for one child will not even cover one-quarter of the cost of that very nominally priced child care. And how many people are going to be able to get child care at $1 an hour?

Second, tax credits do not address the need for increased availability and choices for parents.

As the junior Senator from Missouri noted the other day, the lack of supply of care is a major part of the child-care problem. There are waiting lists for subsidized care all over America. There are parents who would prefer to have their children cared for

closer to home, but there are no slots. There may be parents who want their children in extended day programs at school, but there is a long waiting list for that.

If it is available, the kids will be in high school before their names are called.

There may be parents who have children who have special needs. There is a real dearth of child care for these types of children.

A tax credit is not going to address greater availability.

Taxpayers can spend their credit money for any number of other purposes, and I agree that the credit must be unrestricted and the families who sacrifice a second income to have a full-time parent should benefit from this particular credit.

But we have to admit that such an unrestricted credit will not, by itself, result in the creation of a greater number of new child-care slots. It just will not.

Third, a tax credit is not going to improve the quality of care that parents have to choose from. Now what parent who must entrust their child to a nonrelative provider would not want some basic assurances that the provider was honest and competent? The tax credit bills do nothing to provide these assurances. So as good as they are, as important as they may be, there is a lot they do not do and that is why the ABC bill, among other reasons, is so important. I do think we need both and I am fighting as hard as I can to see that we have both.

I want to see the President's ideas come to fruition. On the other hand, if bringing those to fruition means knocking the ABC bill that has now been amended so that it will work very well, and give the States control over their own destiny, then I am not going to be very happy with that.

Now the distinguished Senator from New Mexico also seems to say that with regard to mothers at home, ABC does not help. Well, statistics do not do full justice to families who choose to have a parent at home. And I agree with that. That is why a comprehensive approach is needed. But the ABC bill should be a part of that approach.

In other words, if we put the tax credit, which does take care of the mother at home to a limited degree, with an ABC bill that does help with availability, quality and affordability, three of the most important aspects of this whole debate, then you may have something that will work. Also, if you put both of them side by side in a bill, then you can see which one does work the best and I think you are going to find that both of them work and both of them work for different reasons and for different purposes. And that is what I think we ought to try and get our colleagues to see.

Now what about the sectarian problems? It seems to me that that was raised also by the distinguished Senator from New Mexico. The language in this bill, the so-called Ford-Durenberger amendment, draws the line where many, myself included, believe it ought to be drawn, so that any restrictions with respect to the use of aid are consistent with, but do not exceed, what is required under the establishment clause of the Constitution. The Supreme Court has held that Federal dollars cannot go directly to subsidize pervasive religious teaching. That is the law and I don't believe anyone differs with it.

As a cosponsor of this bill, however, I certainly do not want to restrict the ability of parents to receive funds to send their children to religious institutions unless such participation is constitutionally prohibited. I really believe that that is a very, very important thing. But the language in this bill, including the addition of the Ford-Durenberger amendment, appears perfectly consistent with the Constitution and with precedents set by the court. And this language would likely ensure that the restrictions regarding use of direct aid for sectarian purposes would not apply to child care certificates.

Now, it may very well also be true, and probably is, that with the tax credit approach, since all the money comes directly to the parents and they can use it for anything they want to, maybe even child care, that they can send their children to a religious school where religion is taught, even though those dollars originally were Federal dollars. I do believe that that would be consistent with the Constitution, and I would argue that before the court no matter what.

But that is another reason why you need both of these. You can add that the tax credit approach is a good approach from that standpoint, but what we have done in this bill is the best that can be done under constitutional law for a direct subsidy and, with the Ford-Durenberger amendment, we have expanded the choices of parents using certificates to the extent permissible by the Constitution.

Now, the distinguished Senator from New Mexico pointed out that we need teachers, nurses, et cetera, in order to run adequate child care. Well, we agree. That is one reason why we need child care assistants. The teacher in some areas of my State makes barely enough to make ends meet. We need nurses. Now, that could be why hospitals have been in the forefront of providing on-site child care.

So in all of these, I do not see any really legitimate sticking reasons why the distinguished Senator from New Mexico, or anybody else, for that matter, should be against the ABC bill.

I could see why somebody might be against it because it is a direct payment by the Federal Government. But, really, if you stop to think about it, it is not too much different from an indirect payment from the Federal Government in the form of refundable taxes.

Now, the distinguished Senator from Washington made some points. Again, he does not like the standards aspect. He argues it should be left to the States. We do. He argues that the standards raise the cost of child care. They do. But without them we may have all kinds of health and other concerns, safety concerns, that parents are concerned about.

He argues that the model standards might lead to more and more standards. Well, they might, but they might not, too. The fact is that most States have adequate standards, and I think that model standards, will take that into consideration.

With regard to standards, the whole thing this bill does, other than turn it over to States and provide that there will be a national advisory panel to create model standards, is we suggest six categories where the States may be interested in working on the quality of child care.

No. 1 is staff-child ratio. Everybody who looks at this problem knows that that is a major consideration. If you are going to have 13 kids with one staff person, that may be a difficult situation where the children may not have adequate protections and care. So there may be some reasonable way that we can come up with in the States with an adequate staff-child ratio.

No. 2 would be group size. How big should the group be? How big should the child care facilities needs be? How much should they meet?

No. 3, health and safety. I do not know of anybody who is not concerned about that when you talk about our children.

We ought to be concerned with these six subcategories under health and safety.

Prevention and control of infectious diseases; injury prevention surely. We are concerned about whether a child has measles or chickenpox or the flu or any number of other things and a minimum of teaching may be able to make our people aware of child-care centers and otherwise as to what can be done in those areas. Everybody has to be concerned about that for our children. How about the building and physical premises? The distinguished Senator from Connecticut pointed out most parents are not engineers nor are we electricians. Nor are we safety experts or safety inspectors. It may be that the States should look at that, and I believe they should.

How about general health and nutrition? If they are going to give lunches or breakfasts or suppers at these child-care centers or in these homes or wherever child care is done, would it not be helpful to have some advice on general health and nutrition?

How about special needs children? Everyone of us ought to be concerned about that. There may be a good reason to come up with some basically satisfactory guidelines to help with special needs children.

How about child abuse prevention? Would it not be wonderful to make sure that in all the child care delivered in this country we can avoid child abuse?

Well, these are six categories, which I do not think anybody can disagree with, that ought to be looked at by the States, and we just suggest that they do.

Now, the next one is preservice training and background checks on personnel. It seems to me that is a logical thing to do.

The fifth one is parental involvement. Just how involved should the parents be? Some of the best child care in this country involves the parents, gets them to participate. They come in and give so much of themselves to these child-care facilities and in the process the children benefit. They feel part of it. The family participates and in the end it is a better center or it is a better child-care situation.

How about in-service training, which is the sixth major category?

Well, those are the categories with regard to child care. I think if we are going to do anything, we have to worry about the quality of child care delivered in our State and local areas and the States will be worried about that.

Our friend from Washington raises whether the Government should pay the providers directly or help the parents pay by delivering the tax credit to the parents in a refundable way and letting them pay for the child care of their choice.

Well, I am not sure that the difference between the tax credit and direct funding reflects a difference in freedom. Under this bill the State has the right to directly fund child-care slots for and on behalf of individual families or the State can give them child-care certificates which enable them to go anywhere they want to go with their child for child-care purposes and those certificates can be redeemed to help pay for the cost of the child care.

We are talking apples and oranges, in one sense. I think both approaches are legitimate and valid and both have their pluses and both have their minuses. Again, that is why we need a comprehensive bill that includes both.

My friend from Washington said that there is a concern for the treatment of parents who want to care for their own children. Well, he said we should not discriminate even indirectly; child care should be available to both.

I cannot differ with that. Both Senators from New Mexico and Washington are concerned about the impact of child care on religious institutions. Well, so am I. And to the extent we are dealing with direct funding in the ABC bill and also with certificates, we have permitted the greatest amount of participation by both sectarian and nonsectarian institutions permitted under the Constitution.

In the case of tax credits, it may very well be that they will work well in the sense that the moneys come to the parents. They can use it any way they want to. Therefore we do not have the church-state problems that we otherwise have, at least with respect to direct aid under the ABC bill.

Again, that is another reason why both approaches are desirable.

If I understand the amendment of the distinguished Senator from Kansas, our minority leader, it will be a substitute for the whole bill that would subsume and do away with the ABC portion of this bill, which can do so much good and can be so directly influential in helping to alleviate some of the child-care problems in this society, and replacing it completely with a refundable tax credit approach with the same $400 million block grant to enable the States to do so much that really came from the Hatch-Johnston bill that we filed early in the game, the earliest one filed.

The fact is that is already written into the ABC bill, and all we need is the refundable tax credit side and I think we would have a bill that really will work. So I am going to fight anybody who wants to do away with the ABC aspect of this because I think it has been amended to such a degree that it will work. It makes a lot of sense. It will help to alleviate problems that the other approach will not alleviate. And even though it does not do everything the other approach does, it does a lot of things the other approach cannot do. And that being the case, it seems to me it is deserving of our support.

So, I am hopeful that before all is said and done we will be able to merge the two. That way the President becomes part of this and, of course, we get the best aspects of both bills and we have a situation that really will work in our society for the benefit of families all over America, but ultimately for the benefit of these children, who simply have to be taken off the streets and given adequate care and supervision during daylight hours.

I am concerned about some of the things that have been raised, but let us not look at it just from one perspective. Let us look at it from a total perspective and comprehensive perspective and in the end I think we can benefit our families as never before.

I am happy to yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut [Mr. DODD].

Mr. DODD. Mr. President, once again Senator HATCH, our colleague, has very adequately addressed the arguments that have been raised this afternoon in opposition to this legislation. He has done so in a very clear and concise way. It needs to be reemphasized.

Unfortunately, what we seem to be dealing with, I will say this again, is the fact that people, it seems, are sort of regretful, in a sense, that we have not introduced the old bill. They would like us to go back a couple of years and reintroduce the old bill, because that was an easier bill to attack. We have, in the last couple of days, had to remind people that the old bill is just that, it is the old bill. We have gone through a process of hearings and conferences and meetings with Governors and others, and this bill has evolved, as legislation does. I have never seen a bill yet that looked the same on the day it was passed as the day it was introduced. That is the legislative process. And this bill was introduced 2 years ago.

To listen to some people talk today, that bill is before us; it is on the floor. It is not. It has been gone for a long time. So we need to focus on what is before us. And what is before us, as the Senator from Utah pointed out, is a balanced appropriate piece of legislation that maximizes parental choice, provides assistance for people in making those choices, gives maximum flexibility to our States to set up standards that reflect what those States' needs are and the needs of the people who live in those States. It deals realistically with cost. It provides both tax credits as well as direct financial assistance. It marries the two ideas that people have been debating for 2 years: do we go the tax credit route or do we go the direct appropriations route?

A group of us sat down and said what seems to make sense here, because there is merit in both of those approaches, to put together a bill that reflects the benefits or the best aspects of both the credits and the direct appropriations. And that is what we have done with this legislation. It maximizes business-private, private-public partnerships, to encourage the expansion of child-care services, it encourages business participation through a variety of vehicles to be able to increase the availability of child care in this country. So, it reaches the quality issue, the availability issue and the affordability question, all of which are vitally important

and which no one disagrees with today.

If we just go the tax credit route we run the risk of not dealing effectively with the quality issue or the availability issue. If we just dealt with the ABC portion we do not deal effectively, in my view, with the affordability question and we may not get the kind of availability through expansion, because of people having more dollars to spend on child-care services that they need.

So, really, one side needs the other, in a sense, and that is what this process has produced. The evolution, if you will, of this piece of legislation has produced this.

Again, our colleague from New Mexico has indicated that we ought to be promoting parents staying at home; that somehow we are acting as a siren call, luring mothers out of their homes into the job market rather than staying at home where they belong.

First of all, I would say with all due respect to my colleague from New Mexico that is insulting to single parents who have no choice. A recent study or survey done by the New York Times indicated that well over 70 percent of women in the work force, regardless of their incomes, prefer to be at home with their children; poor and rich would prefer to be at home.

Obviously the ones who have money are making a choice not to be. We do not deal with them. We provide no subsidy, no assistance, nothing at all for that crowd.

I personally come down on the side that, people have the opportunity to make a choice, I would like to see them make a choice of one parent staying at home. That was my experience growing up. I think it is the best world for young children.

The reality is, as the Senator from Utah has pointed out, that there is a whole crowd of people, the overwhelming majority of people in the work force, who fall into that latter category, who do not have the choice. And some suggest, somehow, that they are doing something wrong by working, being productive, providing for their family, their two or three children they may be raising on their own; that they are doing something wrong by doing that. Ironically, some of the people who make that argument are the ones who I have heard for the last 15 years stand up and argue about that welfare mother, she ought to get out of the house and go to work. She ought to be productive.

Am I to believe now that those people who made all those statements for years really wanted her to stay at home and raise those children? Or is it a double standard? The welfare mother ought to work, but if you have a little money, you ought to stay at home? I mean that seems to me to be what they seem to be suggesting here, based on where you come from or what your economic position is here.

Again, I say most, the overwhelming majority of people we are talking about are either single parents raising children or those who have spouses who earn less than $15,000 a year. Our bill says that you cannot take advantage of either the tax credits or the direct financial assistance if your income gets above 100 percent of poverty in any State.

In my State, for a family of four, that would be around $30,000 a year. In the State of my colleague from Utah it is substantially lower than that number. He stated it the other day, but it is much lower, almost half that number.

So the idea that somehow we are providing some terrific incentive for affluent people here to lure them out of the home is just false: absolutely, categorically untrue. There is nothing in this legislation that indicates that.

For those who would stand up and suggest so, they are just not being honest in their appraisal of this legislation. I do not mind criticism. I do not mind an argument against the bill. But, please, do not raise arguments about parts of a bill that do not exist.

And that is what we are facing here. There are too many of these criticisms that are raised about it: Standards, denial of choice. My colleague from Utah could not have been clearer on that in terms of what we are talking about here in model standards and maximizing choice for parents with infants, or the choice between a tax credit and a direct appropriation.

A tax credit once it is done, it is done. That money is there for as far as the eye can see in the future. An appropriation requires this body to come back every year and approve it. Clearly, if we find that business is doing more, that the issue is being addressed by other means, we can decide not to appropriate the funds. The tax credit, once we do it, as we all know here, it is very difficult to take back the credit once you have established one. You have to change the law to do that.

So, again, I am repeating much of what has been said here by the Senator from Utah in a number of these areas. Again, I cite over and over again, I do not think—I see our good friend from Virginia who is occupying the Chair—the Governor of Virginia, Governor Baliles, Governor Kean, certainly a Republican in good standing in New Jersey, and the Governor of Arkansas, these people did not sign a letter supporting the act for better child care because they thought it was a huge federally mandated program that was going to impose restrictions on their States. Those Governors and the States they represent are not foolish.

The Senator from New Mexico suggested we are going to make the States pay for all this. You can walk back and see it, 8 percent of the funds go for State administration, one of the first times that has ever been done. Even when we do not mandate, we allocate the resources here, 8 percent being for the States so they do not have to go back to the citizens of Virginia or Connecticut and increase taxes to pay for expanded child care in their States.

I would hope my colleagues would walk to the back of the room and read what is in the bill. Some people said they have not read it yet; they will read it tonight. But they are on the floor today criticizing it. How do I handle an argument like that? Read the bill and then come over and debate it. Do not come over and tell me what is in the bill and tell me tonight I am going to go home and read that bill but today I want to tell you what is wrong with it.

I am willing to debate; I am willing to argue. It is pretty difficult to debate with people who have not read the legislation and yet want to be critical about it. I think what we have here, Mr. President, is a situation where people seem to be annoyed that we worked hard, and it has been a lot of hard work. As the Senator from Utah said the other day, there have been literally hundreds of hours, and that is not an exaggeration, hundreds of hours of people who walked into the room totally disagreeing with each other and hundreds of hours later walking out and agreeing. That is what legislators are supposed to do or try to do to see if you cannot come to some agreement when there is clearly a need that must be met. Child care as every single Member of this body knows, is an issue that must be met. We need to deal with that issue. We are not debating that any longer. We are not debating whether the three problems are quality, availability and affordability. We all agree with that. Now the issue is how best do you do it.

The Senator from Utah, the Senator from Connecticut, along with others, like the Senator from Maryland, can sit down for hundreds of hours with professionals and experts and parents and religious leaders in this country and spend 2 years putting together a bill that is now before us and then have someone walk out on the floor and say: "I haven't read it yet, but I'm against it." What kind of legislating is that?

We have not only read it, we have worked at it, we cried over it, we fought over it, we yelled at each other over it. We have done everything we can to produce a product that we think represents the best 2 years of labor. Tomorrow I hope we will get to some amendments. We have only dealt with one here today. We did not have recorded votes. We ought to get to

this, if there are alternatives, if people have good ideas, that is what we have floor debate for. If people have ideas as to how we can modify it or make it better, the Senator from Utah and I are open to that. We have never closed our eyes and ears to a good argument or good idea in this legislation. Certainly we have not arrived at that point, as far as this Senator is concerned.

If there are Members who would like to come forward and propose some ideas and suggestions in the spirit of making this a better product, I want to hear about them. If they are good ideas, I will take them, I will try and accept them. That is how we ought to proceed. I hope we do not get amendments and arguments being offered for the sake of trying to kill the bill or trying to come up with an alternative just for the sake of an alternative so someone claims credit for some product.

The best quote I ever heard about taking credit came from Gen. George Marshall who once said there is no limit to what you can accomplish in Washington, DC, as long as you are willing to give someone else credit for it. By God, if someone wants credit for it they can have credit for it if I can have their vote so we can do something about child care.

Sometimes I think that is the motivation behind all this: Whose name is on it, which party takes credit for it. The Senator from Utah and I got over that a long time ago in trying to put this together. I think we are both proud of that fact. I would not be here without him; this bill would not be on the floor. It would not have come out of committee had it not been for the conservative Senator from Utah. I believe that with every fiber of my body. It is a bipartisan proposal because the Senator from Utah and some of his colleagues worked to bring it to this point. The best legislation this place ever produces is when it is produced in that process. I am proud to be associated with him in that effort.

Again, Mr. President, I commend my colleague from Utah for his response to some of the criticism raised about the legislation today. All I can urge is tomorrow when Members come to the floor to debate this, I hope they will do what they said they will do, read the bill tonight, so we can have a good debate tomorrow.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah, Senator HATCH.

Mr. HATCH. Mr. President, I really enjoyed and appreciated the remarks of my distinguished colleague from Connecticut. I do not know how anybody could have worked harder. I think what he has done is gained some important details.

I think one of the most important details is anybody who argues that wealthy women are going to benefit from this bill has not read the bill and does not know what is going to happen. Anybody who argues that all we are doing is enticing women to go out of the home—hey, they are already out there, and they do not know what to do. They do not know what to do about their children. They are scared to death for their children, and they ought to be, in this drug-ridden and crime-ridden society today. I am not about to leave these kids just completely at the whim of the adverse influences on our society, which is what is happening.

The fact of the matter is, that this is to help families who really cannot afford to take care of child care. Neither of these approaches, either the tax credit approach or the ABC direct subsidy approach, is going to help people who do not need the help. Like the distinguished Senator from Connecticut said, there are literally millions of families out there in anguish because they do not know what to do with their children and they both have to work, or in the case of most women who are working, they have to work because they are a single, sole head of that household. They are divorced or widowed or otherwise unmarried and they do not have any other choice but to work unless they stay on welfare.

One of the best remarks he made was some of the people who are criticizing this the most are those who made the big stink about welfare mothers sitting and sapping up the tax dollars. Let me tell you something, you cannot have it both ways. If we want them to work and support their families, then we have to help them with their children.

I cannot begin to tell you over the last 4, 5 or 6 years since we worked with women in our State and with the Women's Advisory Committee that has advised me from the left to the right, Democrats, Republicans, independents, how this issue continues to crop up because women do not know what to do, if they have to work, with their children. They do not know what to do.

By the way, if we can create additional licensed slots that will effectively and carefully care for our children, then we ought to do that. That will benefit everybody, even women for any reason at all who want to work. They have every right to do that.

I agree with the distinguished Senator from Connecticut. I do not know of a parent yet who does not wish that parents or a parent could be in the home with their children. I do not know one family who would not want the better choice, and that is to have a parent home with the children. They would love to do it. In most of these cases, they have no other way. If they can work, and they do not want to be on welfare, and they want to be self-sufficient, and they want to have the self-esteem—that comes from taking care of themselves and their children—then, my gosh, you cannot imagine the anguish they must have when they realize they cannot take care of their children and work, too, or they cannot work and find a way to take care of their children.

I have had women come to me and tell me that even though they are making a fairly decent living, they do not have anywhere to send their kids. They do not have a baby sitter, they do not have family; they do not have anybody else in the town that they live in; they do not have anybody volunteering. They are willing to pay, but they do not even have the opportunity to find somebody to care for their kids. Where they can find them, they cannot afford them. And like Robin Brown, who I mentioned on the first day, with four kids, she had to work overtime constantly, two jobs, sometimes three jobs, in order to care for those kids and put food on the table, and her 10-year-old had to watch the younger children. She was cited for child neglect twice, and she is a wonderful mother. But because she was not home with those kids and had nobody to care for them and had to feed them, she did not have any choice other than to work and get cited for child neglect.

Look, let us get with the real world and let us try to solve these problems. I agree with the distinguished Senator from Connecticut. Let us not criticize the bill unless you can point to chapter and verse and say this needs to be changed and then we will change it. We are not averse to amendments. We would love to have them, but do not tell me that only the tax credit approach worked and this one does not. It used to be only the ABC bill worked and the tax credit did not work.

With the help of people with good will, we have now been able to elucidate the advantages of each of these approaches, and if we bind them together we will have something that really will work for the benefit of families in our society.

To that extent I want to tell the distinguished Senator from Connecticut how much of may respect he really has. I do not know anybody who could have worked as indefatigably as he has, to do what is right for families in America. I have total admiration for him.

As to the distinguished Senator from Maryland, BARBARA MIKULSKI, I cannot begin to tell you, Mr. President, how hard she has worked on this bill and all the approaches to it, and the intelligence she has brought to the process. It has been remarkable. My esteem and respect for these Senators could not be higher.

I think this bill is important and I would like to see it pass before the end of this week. I think it will give heart and hope, not total solutions; we do not have enough money to do that, to almost every family in America who is situated in such a condition as some of these people to whom I have been referring.

Mr. President, I think it is time maybe to end the debate for this day, and with that I yield the floor.

COMPANY CHILD CARE

Mr. COATS. Mr. President, we are in the middle of a debate over child care that has occupied our attention with a thousand sometimes petty controversies. But, when pieced together, they form the distinct outline of a more fundamental disagreement. We have come upon a great truth by way of smaller quarrels.

On one side are those whose trust in the unfailing wisdom of Government has never been tempered by the hard facts and failures of recent history. On the other side are those who trust instead in the judgment and ingenuity of intermediary institutions that stand between individuals and the state—groups like the family, the church, even private businesses.

Both of these approaches believe in activism to meet the child-care needs of lower income families. But the first approach restricts individual choice to those options Government can control. The second, in contrast, is a protest against paternalism. It does not substitute its own judgment for that of parents or businesses. It simply expands the range of options by adjustments in the Tax Code.

It is with this division in mind that I submit an article I recently read into the RECORD titled "Company Child Care"—Indiana Business, June 1989—it is an excellent example of how businesses in Indiana are meeting child care needs without intrusive Government intervention and regulation. These are the types of efforts that the Government should be encouraging. Our goal must not be the extention of governmental power but the provision of help. The only Government activism in child care that is worth our exertion is an activism that enables, not directs. Our object should be to help a free people meet their own goals—not a Government that puts its pudgy and soiled finger into every pie.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

KID STUFF NO MORE

(By Susan Guyett)

Child care isn't kid stuff anymore. It's discussed in presidential campaigns, debated in the state legislature and considered by top management in corporate Indiana.

A growing dependence on women in the work force and a decline in population have forced businesses to take a new look at how child care plays a role in the marketplace. Quality child care gives working parents the peace of mind to concentrate on business. Quality child care supplements the educational and social skills children need as employees of tomorrow.

For more and more families, it's not a matter of whether Mommy is going back to work, it's when. A recent report commissioned by Lilly Endowment, Inc., on the state of the child in Indiana indicated that as of 1985, mothers with children under 6 comprise 53 percent of the work force.

The key issues in child care are affordability, availability and quality, the experts say. What's available in a city may be too expensive for some workers. On the other hand, there are times when what's out there may be merely substandard babysitting that offers little more than diaper-changing. Some parents have no choice but care that offers neither nurturing nor developmentally appropriate interaction.

A bill offering tax credits to businesses that subsidize child care failed in both houses of the Indiana General Assembly during this past session. The attention it received, however, has given child-care advocates reason to be hopeful. The measure left many Indiana people thinking that child care is an issue whose time has come.

But even without tax incentives, some Indiana businesses have realized that what is good for children is good for their employees as well. Throughout the state there are examples of companies that are participating in innovative child-care solutions. Support comes in many forms, including on-site day-care centers, sophisticated information and referral systems, flexible work hours, cooperative ventures and even outright payments to assist families with child-care needs.

Businesses have discovered that child care isn't just a women's issue anymore, says Ena Shelley, associate professor of education at Butler University in Indianapolis and president of the Indiana Alliance for Better Child Care. Child care is a business issue, a work force issue and, in some localities, a community development issue.

Businesses that have been successful in tackling child-care issues are those in which top executives have given their enthusiastic support to plans that carefully fit their company and employee needs.

For Excel Industries, Inc.'s Nyloncraft subsidiary in Mishawaka, the answer was an on-site, 24-hour-a-day learning center. The 8-year-old operation has a complicated transportation schedule that not only takes children to and from school but also delivers them, bundled up, to their parents at a sister plant in South Bend at the end of the 11:30 p.m. shift.

For Lincoln National Corporation in Fort Wayne, the answer was a nationally acclaimed information and referral system that provides employees with the names of qualified and monitored home day-care providers. The company, in addition, has taken on the job of helping the child-care providers become savvy businesswomen and, in turn, more-professional care givers.

That has nothing to do with the insurance business, but it does have something to do with improving the city's economy by helping nearly 300 small-business people. Madeleine Baker, Lincoln National's child-care coordinator, says home-care providers on the company-approved roster earn anywhere from $5,000 to $19,000 a year.

For a chain of Burger King restaurants in northern Indiana, the child-care solution was an outright subsidy. Qualified day shift workers can collect up to $45 a week for child-care expenses.

Dan Fitzpatrick, president of Burger Services, Inc., in South Bend, which owns and operates 41 Burger Kings in northern Indiana and in Michigan, says many of his 600 employees are working parents. The $1.50-an-hour subsidy has helped him recruit and keep quality workers. Approximately 30 workers are now taking advantage of the allowance. "All I can say is that it made sense and it makes sense today for us. If it didn't make sense, I wouldn't be doing it," he says.

Not every employer sees the issue as simply as Fitzpatrick does. Many executives who are working to find a solution to their employees' child-care needs are more cautious.

Frank McAlister, the Indiana Chamber of Commerce's senior vice-president for human resources, has had a lot of questions about child care lately. "I think there is a heightened enlightenment and awareness about the problem on behalf of the employers," he says. "But I'd be telling you wrong if I said there was a big stampede right now toward doing something."

Private sector initiatives are also popping up. Innovative Design Concepts of Indianapolis included a day-care center for infants in the design of a new building. Architect Brad Lewis says the building is expected to attract small-business operators who may have been working out of their homes. A day-care center for older children is located next door.

If company employees haven't expressed interest in child-care issues, it's not because families don't deal with them every day. Consider these statistics reported by the child-care consultation service at the Lutheran Hospital of Fort Wayne, Inc.:

Both spouses work outside the home in 60 percent of all two-parent families;

Single-parent households doubled in the past decade;

By 1990, 65 percent of the people entering the labor market will be women;

By 2000, four out of every five babies in the United States will have mothers working outside the home.

Unfortunately, there are no hard figures on the amount of child care that is needed. More than 2,100 licensed day-care centers and homes are registered with the state. Many more churches, schools and civic groups such as the YWCA also offer child care. These organizations aren't required to be licensed, though, if they provide care for only a few hours a day. According to the Indiana Department of Public Welfare's day-care licensing supervisor, Keith Carver, those licensed centers and homes can care for about 55,000 children. 1980 U.S. Census figures indicate that a total of 400,000 children age 6 and under live in Indiana, says Michael Mirable, president of the Indiana Licensed Day Care Association. Not all children are in need of licensed day care, to be sure, but there's no way of knowing how many children are under the care of someone other than their parents.

"We call it the 'underground market,'" says Ginny Purcell, a project director for the Fort Wayne Women's Bureau. "This is a major problem in Indiana. We know these children are receiving care because their parents are in the work force but they are not countable."

Finding a child-care solution in a business or community sometimes takes a decision maker who understands the stresses parents feel.

Marjorie Soyugenc of Evansville is a mother who is employed outside her home. She's spent all of her adult years going to school or working and, in the process, finding proper care for her children. She remembers the uncertainty and what she calls the "absolute panic" that sets in when a child-care provider abruptly fails to deliver services. She also remembers occasions when she couldn't give all of her attention to her job because of child-care worries.

Soyugenc's children are grown now, but, as president of Welborn Baptist Hospital, she's in a position to put other minds at ease. Next year, Welborn will open a $750,000 child-care facility a few blocks from the hospital. Welborn was prepared to go it alone but invited local businesses to participate. A dozen Evansville corporations have signed on as contributing members so their employees can take advantage of the service. It took five years to come up with the studies, plans and economic justification to get the Welborn center project off the ground, Soyugenic says.

Cal Olson, president of Child Care Management of Indiana, Inc., in Zionsville says businesses sometimes shy away from child-care issues because they think their only option is to build an on-site center. Consultants such as Olson recommend a needs assessment or survey to determine a company's individual requirements.

Asking the right questions is vital, says Kathleen Likeness, director of the Lutheran Hospital center in Fort Wayne. "Questions like 'Do you need child care?" just doesn't do it," she says. A carefully worded and analyzed survey may reveal that your employees have few child-care worries. Or an employer may discover workers have trouble finding before- and after-school care or their biggest worry is care for sick children. Research should tie in traffic patterns, care already available in the community and family trends within a company's employee population, Likeness says.

Fitzpatrick skipped the consultants when he set up the restaurant chain's subsidy program. "This isn't rocket science. It's really pretty simple," he says. "You have a bunch of people who work for you, so you talk to them. You say 'What do you need and how are we doing?' " His company uses a referral service so that the children in the subsidized program are cared for in monitored, licensed day-care homes near the worker's residence or near the restaurant where he or she works.

Liability factors also weigh heavily on executives' minds, says Loretta Kollar, director of the Excel-Nyloncraft center. They worry not only about injury lawsuits but also about child-abuse accusations. Kollar thinks liability fears, while a legitimate concern, shouldn't overshadow the benefits.

Olson advises clients who are concerned about liability to explore options—including voucher systems and contract arrangements with established day-care centers—to minimize the concern. Child-care officials blame the news media for blowing the number and extent of child-abuse cases out of proportion. Very few of the abuse incidents take place in licensed day-care centers, says Mirable, who is director of ECLC Learning Centers, Inc., in Indianapolis. The trouble, he says, is that news accounts categorize every child-care situation as having happened in a "center" whether it is a licensed center or not.

One thing that can stop cold any movement in child-care benefits is a CEO who isn't behind the notion, the experts say.

Just as there are differences of opinion among employers, families show preferences about child-care options. Mothers of young babies show a clear preference for home care rather than day-care centers, Olson says. "There's almost like a natural stigma attached to taking your child to a center, like you're taking them to an institution."

There's reluctance by traditionalists to acknowledge the changing family structure. "We have a lot of people, still, who really feel mothers should be home and that there's no excuse for mothers to work," Butler University's Shelly says. "We're really trying to educate them that for whatever reason they work, whether it be financial or just choice, the fact of the matter is, there are these children who need care."

Mr. DODD. Mr. President, I know of no other Members who wish to be heard on our side today on the matter before the Senate, and I gather the same is true on the Republican side.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on June 16, 1989, during the recess of the Senate, received a message from the President of the United States submitting sundry nominations and withdrawals, which were referred to the appropriate committee.

(The nominations and withdrawals received on June 16, 1989, are printed in today's RECORD at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1299. A communication from the Acting Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting a draft of proposed legislation to permit the secretaries concerned to correct expeditiously military records regarding the promotion and pay of enlisted members of the armed forces; to the Committee on Armed Services.

EC-1300. A communication from the Deputy Assistant Secretary of the Air Force (Logistics), transmitting, pursuant to law, a report on the conversion of the packaging/transportation support function at McClellan Air Force Base, California, to performance by contract; to the Committee on Armed Services.

EC-1301. A communication from the Assistant Secretary of the Interior (Fish and Wildlife and Parks), transmitting, pursuant to law, maps of undeveloped coastal barriers along the Great Lakes that qualify for inclusion in the Coastal Barrier Resources System; to the Committee on Environment and Public Works.

EC-1302. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on extradition and mutual legal assistance treaties and model comprehensive antidrug laws; to the Committee on Foreign Relations.

EC-1303. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, the semiannual report of the Inspector General, Agency for International Development, for the period ending March 31, 1989; to the Committee on Governmental Affairs.

EC-1304. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1988; to the Committee on Governmental Affairs.

EC-1305. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "A Review of Condominium Conversion Fees Collected and Disbursed for the Period 1983 through 1988"; to the Committee on Governmental Affairs.

EC-1306. A communication from the Acting Director of the Office of Personnel Management, transmitting, pursuant to law, a report entitled "Performance Management and Recognition System FY 1987 Performance Cycle"; to the Committee on Governmental Affairs.

EC-1307. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report and recommendation with respect to a claim against the United States; to the Committee on the Judiciary.

EC-1308. A communication from the Secretary of Education transmitting, pursuant to law, a report of the National Center for Education Statistics entitled "The Condition of Education"; to the Committee on Labor and Human Resources.

EC-1309. A communication from the Chairman and Members of the Railroad Retirement Board, transmitting, pursuant to law, a report on the actuarial status of the railroad retirement system including any recommendations for financing changes; to the Committee on Labor and Human Resources.

EC-1310. A communication from the Secretary of Education, transmitting, pursuant to law, Final Priority, Required Activities, and Selection Criteria for a High Technology Competition under the Cooperative Demonstration Program; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 358: A bill to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes (Rept. No. 101-55).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CONRAD:

S. 1200. A bill to implement a national comprehensive plant management program that will protect our environment by controlling or containing undesirable plant species on Federal lands; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BENTSEN (for himself, Mr. CHAFEE, Mr. RIEGLE, Mr. MATSUNAGA, and Mr. BRADLEY):

S. 1201. A bill to amend title XIX of the Social Security Act to make certain modifications in the Medicaid program to provide pregnant women and children greater access to health care under such program, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WILSON:

S. Con. Res. 48. A concurrent resolution expressing the Sense of the Congress regarding human rights abuses in China since the Red Army massacre of June 3, 1989; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD:

S. 1200. A bill to implement a national comprehensive plant management program that will protect our environment by controlling or containing undesirable plant species on Federal lands; to the Committee on Agriculture, Nutrition, and Forestry.

NOXIOUS WEED CONTROL ACT

Mr. CONRAD. Mr. President, today, I am introducing legislation to address a growing problem in my State and throughout the West—the spread of noxious weeds.

Leafy spurge, spotted knapweed, and other harmful weeds are threatening the quality of our forage, land, air, and water resources. These nuisance plants increase soil erosion and sediment yields which damages water quality. They are a threat to both wildlife and domestic animals as they reduce the growth of desirable vegetation. They adversely affect reforestation efforts and recreational opportunities. And they cause human health hazards through the spread of pollen and allergies.

The infestation and spread of noxious weeds creates a two-pronged financial loss for North Dakota and other Agricultural states: The loss of land; and the loss of the tax base because the land value is diminished.

North Dakota's most pervasive noxious weed, leafy spurge, now covers 1.5 million acres in North Dakota—in fact, this acreage level has doubled since 1973, according to the North Dakota State University.

The threat and damage imposed by noxious weeds will only get worse unless we act not to control the situation. At the top of our agenda should be better coordination of inter-agency weed control efforts and communication. No weed abatement strategy will be effective unless weeds are controlled across the board, regardless of landownership. For example, efforts to control weeds solely on Federal lands are ill-fated if the neighboring State or private land does not have a program.

The purpose of the bill I am introducing today is twofold: First, to coordinate Federal, State, and local efforts to manage weeds on private, State, and Federal lands through cooperative agreements; and, second, to require all Federal agencies managing or administering Federal lands to designate a specific office and contact person for coordinating noxious weed control efforts.

I am convinced that a unified, systematic, approach to weed control, coupled with research advancements we are achieving at the four USDA grasslands research centers and other facilities—such as the Weed Science Center at North Dakota State—will be the winning formula necessary for effective noxious weed management.

Mr. President, this weekend, I again traveled across my State and saw firsthand the threat that we are facing from the spread of noxious weeds. Leafy spurge is out of control. Kochia is out of control. Many of these weed infestations are on Federal lands, on conservation reserve acres.

The drought of last year provided an almost perfect environment for the weeds to prosper. It is a remarkable circumstance when hardship visited on a State is only made worse because it provides an environment in which weeds can spread even further.

Mr. President, it almost sounds humorous to have a war on weeds. And we have had some on this floor, some of my colleagues, who have in the past made it humorous to talk about weeds. I must say I share that feeling. But we also understand, those of us who represent agricultural States, as does the current occupant of the chair, that it is no laughing matter when the weeds take over and threaten the economic viability of an agricultural area.

I urge my colleagues to join me in this war against weeds, and I ask unanimous consent that the full text of my bill, the Noxious Weed Control Act, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1200

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Noxious Weed Control Act".

SEC. 2. FINDINGS.

(a) CURRENT CONDITIONS.—The Congress finds that undesirable plant species are—

(1) contaminating Federal lands by taking over and encroaching on desirable plant species;

(2) polluting air, land, and water resources by increasing soil erosion and decreasing natural ground cover;

(3) spreading from Federal lands to contaminate State and private lands;

(4) causing wildlife species to migrate from Federal lands by taking over the natural habitat of those wildlife species; and

(5) causing human health hazards through the spread of pollen, insects, and disease.

(b) CONSEQUENCES OF INACTION.—The Congress further finds that unless undesirable plant species are controlled or contained, they will—

(1) increase exponentially, causing further contamination and deterioration of wildlife habitat, recreational resources, and aesthetic values;

(2) increase soil, water, and air pollution;

(3) have a detrimental effect to human health; and

(4) further eliminate natural species of vegetation.

(c) INADEQUACY OF EXISTING LAW.—The Congress further finds that even though there are numerous laws addressing the stewardship and management of Federal lands, those laws do not directly or effectively deal with the management of undesirable plant species on Federal lands.

(d) NECESSARY ACTION.—The Congress further finds that a comprehensive, national undesirable plant management act will—

(1) protect our environment by preventing the pollution of air, land, and water resources and will reduce soil erosion by preventing the introduction and continuing the spread of undesirable plant species on Federal lands;

(2) protect recreation uses and aesthetic values on Federal lands by reducing the risk of introduction of undesirable plant species from one area to another;

(3) protect habitat for wildlife and domestic animals on the Federal lands by reducing the spread of undesirable plants which are detrimental to desirable vegetation;

(4) protect threatened and endangered species listed under the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) by reducing the infestation of undesirable plant species to protected ecosystems; and

(5) provide for the management, development, and enhancement of Federal lands by protecting those lands from the continuing spread of undesirable plant species.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) COOPERATIVE AGREEMENT.—The term "Cooperative Agreement" means a written agreement between a Federal agency and a State agency entered into pursuant to section 5.

(2) EXOTIC PLANT.—The term "exotic plant" means a plant with one or more of the following attributes—

(A) it is not a regular member of the native or natural community in which it is found;

(B) it is of little economic value; or

(C) it colonizes disturbed habitats.

(3) FEDERAL AGENCY.—The term "Federal agency" means a department, agency, or bureau of the Federal Government responsible for administering or managing Federal lands under its jurisdiction.

(4) FEDERAL LANDS.—The term "Federal lands" means lands managed by or under the jurisdiction of the Federal Government.

(5) INTEGRATED MANAGEMENT SYSTEM.—The term "integrated management system" means a system for the planning and implementation of a program using an interdisciplinary approach to select a method for containing or controlling an undesirable plant species or group of species using all available methods, including—

(A) education;

(B) preventive measures;

(C) physical or mechanical methods;

(D) biological agents;

(E) herbicide methods;

(F) cultural methods; and

(G) general land management practices.

(6) INTERDISCIPLINARY APPROACH.—The term "interdisciplinary approach" means an approach to making decisions regarding the containment or control of an undesirable plant species or group of species, which—

(A) includes participation by personnel of Federal or State administrative agencies with experience in areas including weed science, range science, wildlife biology, land management, and forestry; and

(B) includes consideration of—

(i) the most efficient and effective method of containing or controlling the undesirable plant species;

(ii) scientific evidence and current technology,

(iii) the physiology and habitat of a plant species; and

(iv) the economic, social, and ecological consequences of implementing the program.

(8) NOXIOUS PLANT.—The term "noxious plant" means a plant, seed, or part of a plant or seed with one of more of the following attributes—

(A) it is aggressive, difficult to manage, detrimental, destructive, or poisonous;

(B) it is a carrier of insects or disease;

(C) it is parasitic; or

(D) its direct or indirect effect is detrimental to the management of a desired ecosystem.

(8) STATE AGENCY.—The term "State agency" means a State Department of Agriculture or other State agency responsible for the administration of the undesirable plant laws of a State.

(9) UNDESIRABLE PLANT SPECIES.—The term "undesirable plant species" means plant species that are—

(A) of little economic, aesthetic, or nutritional value; or

(B) are classified as exotic plants or noxious plants as under State law or, in the absence of applicable State law, under Federal law.

SEC. 4. MANAGEMENT OF UNDESIRABLE PLANT SPECIES.

(a) IN GENERAL.—Each Federal agency shall—

(1) designate a specific office and person adequately trained in the management of undesirable plant species to develop and coordinate a program for the management of undesirable plant species on Federal land under the agency's jurisdiction;

(2) establish and adequately fund through the agency's budgetary process a program to manage undesirable plant species on a continuing basis;

(3) enter into and implement cooperative agreements with State and local agencies regarding the management of undesirable plant species on Federal lands under the agency's jurisdiction and on State and private lands adjacent to Federal land;

(4) establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements;

(5) require that equipment (including road construction equipment, recreational vehicles, and farm or ranch equipment) and agronomic crops (including hay, alfalfa, straw, and other feed for livestock or wildlife), prior to entry onto Federal lands, be certified free of undesirable plant species under certification standards set by the Federal agency in consultation with appropriate Federal and State agencies; and

(6) complete an environmental assessment or environmental impact statement that may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to implement plant control or containment no later than 1 year after the necessity of preparing such an assessment or statement is ascertained.

(b) EFFECT ON PERMIT HOLDERS.—(1) A Federal agency shall conduct undesirable plant control and containment in such a manner as will not unduly impair the enjoyment of the benefit of a permit, lease, easement, or right of way for the use of Federal land by the holder thereof.

(2) A holder of a permit, lease, easement, or right of way for the use of Federal land shall be required to exercise the holder's rights under the permit, lease, easement or right of way in such a manner as will not unduly impair a Federal agency's ability to conduct necessary control or containment of undesirable plant species.

SEC. 5. COOPERATIVE AGREEMENTS WITH STATE ADMINISTRATIVE AGENCIES.

(a) IN GENERAL.—A Federal agency shall enter into cooperative agreements with State agencies to coordinate the management of undesirable plant species on Federal lands and State and private lands adjacent thereto.

(b) CONTENTS OF PLAN.—A cooperative agreement entered into pursuant to subsection (a) shall—

(1) prioritize and target undesirable plant species to be controlled or contained within a specific geographic area;

(2) describe an integrated management system to be used to select a method to control or contain the targeted undesirable plant species; and

(3) detail the means of implementing the selected method, define the duties of the Federal agency and the State agency in prosecuting that method and establish a timeframe for the initiation and completion of the tasks specified in the integrated management system.

By Mr. BENTSEN (for himself, Mr. CHAFEE, Mr. RIEGLE, Mr. MATSUNAGA, and Mr. BRADLEY):

S. 1201. A bill to amend title XIX of the Social Security Act to make certain modifications in the Medicaid program to provide pregnant women and children greater access to health care under such program, and for other purposes; to the Committee on Finance.

MATERNAL AND CHILD HEALTH ACT OF 1989

● Mr. BENTSEN. Mr. President, Senators CHAFEE, RIEGLE, and I are pleased to introduce today S. 1201, a bill addressing one of the Nation's most serious problems—the health of America's children.

When I was a kid it was routine to get measles. Now a shot takes care of it. Whoever knew a family that didn't have one case of diptheria or rheumatic fever—or whooping cough? And what parent living through the fifties can forget the dread with which parents viewed summertime—and the onset of polio epidemics?

Now we can eliminate that with a few injections—or a sugar cube.

Except for one thing. Too many kids can't afford innoculations. Forty percent of children under 4 don't even get their basic set of immunizations.

The fact is, America is facing what one health group recently called a "child health crisis."

White American babies die at a greater rate than babies born in Singapore—or a dozen other countries. Minority babies born here today—just a few miles from this chamber—have a greater chance of dying before their first birthday than babies born in Cuba.

Of the 37 million Americans without health insurance, 13 million are children. Not only do millions of them not get immunized; they don't get regular health care of any kind, whether it is amoxicillin for an ear infection or getting the plaque scraped off their teeth.

And things aren't getting better. Between 1979-86 dependent insurance—that means insuring your kids—declined. So did immunizations. And according to CDC, childhood diseases went up. In 1985 mumps tripled over the year before. In 1986 we had the highest number of whooping cough cases since 1970—60 percent of them in kids under 5.

Am I talking just about the poorest of the poor? Not at all. A third of the uninsured kids come from families making from the poverty line to 185 percent of poverty. A parent working fulltime for, say, the minimum wage, can find out her kids have less access to a doctor than they would if she was on welfare. That's not right.

And that, Mr. President, is what this bill is designed to correct.

This bill expands Medicaid, and improves services included under the maternal and child health services block grant. It takes a comprehensive approach to correct the many problems facing pregnant women and children. It complements a variety of other initiatives now pending before this body. It closes gaps in access. It removes a lot of the financial barriers which prevent pregnant women from seeing doctors even when they feel early contractions.

Here's how it works.

First, S. 1201 extends Medicaid coverage to all pregnant women and children under the age of six with incomes below 185 percent of the Federal poverty line. It allows States to expand their coverage even further—for children until their 19th birthday—for families with incomes below the Federal poverty line.

There are some children who until now have been called uninsurable; this means that if they were born with a leaky heart valve, or epilepsy, or developed diabetes, they often can't get insurance even if their families can pay the premiums. This bill will authorize three statewide demonstration projects allowing States to either extend Medicaid coverage or buy employer based coverage for them.

Removing financial barriers can't do everything. There have been other obstacles for pregnant women or sick kids. One of them is the assets test for Medicaid eligilbility. This bill simplifies that test. In fact, it would require States to offer health care coverage to pregnant women who seem to meet the criteria while their applications are being processed.

There are other areas covered by this bill. For example:

EPSDT: Medicaid's early periodic screening, diagnosis, and treatment program has been highly praised those who have seen it work. This bill requires States to offer EPSDT screening whenever doctors suspect medical or mental health problems. It also requires prompt treatment once a condition has been diagnosed. And it requires the Secretary of HHS to find ways of increasing participation in this program which is now used only by about 25 percent of those who are eligible.

Maternal and child health services block grant funding: This bill increases it—from the $563 million now authorized to $711 million. Not much. But enough to enable States to help pregnant women and those children with special health needs—those with cerebral palsy, for example, or muscular dystrophy, or AIDS.

Provider participation: What happens when more and more pregnant women become eligible for Medicaid? We will need more doctors and clinics providing obstetrical and pediatric care. S. 1201 provides financial protection for hospitals caring for kids with costly illnesses. It requires States to provide administrative assistance to obstetrical and pediatric care providers for Medicaid patients.

Home health care: Where would most kids rather be? In a hospital ward or in their own home? I think their own home. Outpatient treatment cuts costs, too. But kids sometimes need equipment in their homes. This bill allows States to increase the number of kids they can treat in the home or community. It allows them to offer home or community based service as an optional Medicaid service for pediatric AIDS patients—or for kids who have to be hooked up to ventilators in order to breathe.

Those are the major provisions.

Mr. President, let me make a few points about this bill.

First, does it cost some money? Yes.

Because of the bill's scope, the Congressional Budget Office was unable to complete a final estimate in time for introduction today. Once they've prepared the final estimate, we may have to make adjustments in the benefit package or effective dates.

Nevertheless, a pretty good ballpark estimate is that this bill will cost about $1 billion—one-tenth of 1 percent of the budget. But what does it offer in return? Among other things, it extends medical insurance to almost two million kids. That's about 15 percent of those now without insurance. It proves the point of those who have been arguing for years, that insurance is cheap, if you design your proposals well.

Which we've done, thanks to the help we got from so many national organizations closely involved with child health, whether the American Academy of Pediatrics, the March of Dimes, the Association of Maternal and Child Health Programs, the National Governors Association, the Children's Defense Fund, or a lot of others.

Besides, these programs more than pay for themselves. Providing prenatal care saves about $3 in the first year of a child's life for every dollar we spend, and immunization? It more than pays for itself—even after the recent upsurge in litigation that's made vaccines so expensive. How can you beat that?

Is this a bill that helps only a few groups of people, or a few areas of the country? Not at all. This bill helps people all over America—not just in the ghettos of New York and Detroit but the small towns of Texas.

Because we've seen what happens to kids when their families can't afford insurance. Recently we had a 4 year old at a for-profit hospital in one Texas city transferred to a public hospital because he had no insurance. His heart stopped in the ambulance. And while he lived, others weren't so lucky. In Another Texas town a pediatric cardiologist—the only one in town—refused to see two twins with heart defects because they had no insurance. Bundled into an ambulance in a desperate attempt to get them the 60 miles to another hospital, both kids died.

Whatever you feel about who's to blame in this kind of incident, the fact is, it will continue to happen when we have so many uinsured kids. This bill is not about abstractions. It's about real kids, and real pain—and real cures.

There are those who oppose any efforts in Washington to help poor people. Some think they just don't work. Some think that no matter how poor you are, you can work hard, get ahead, and if you don't it's your own fault.

Well, maybe. But how does that apply to a 4-year-old in agony because of an ear infection? How does that apply to a kid in the burn unit of a hospital because a kerosene heater short-circuted? How does that apply to a kid with a heart defect, racing to a hospital far away because he's been refused care? How does that apply to the not-yet-born, whose mother simply doesn't know that smoking and drinking are dangerous not only for her—but the fetus?

Mr. President, with surgeon-like precision, we have a chance to remove major obstacles to health care, right now, without even picking up a scalpel. That helps both kids and their parents.

Because working families have a tough time making ends meet in America. It's tough to hold down a job fulltime, then come home to feed your kids and help them with homework before you even change your clothes. But American parents are doing it every day. They know it's their job. They're doing their job.

And levelling the playing field a little by giving their kids a chance at basic health care? I think that's our job.

It will pay dividends for America.

"Childhood shows the man," Milton wrote, "as morning shows the day."

When we examine the childhood of Americans beginning life, we'll be able to tell what kind of citizens they'll become. I urge my colleagues to join us in supporting this bill which will brighten the morning of their lives—and help bring to the rest of their lives, a bit more sunshine.

I ask unanimous consent that the text of S. 1201 and a bill summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1201

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Maternal and Child Health Act of 1989".

SEC. 2. MANDATORY COVERAGE OF CERTAIN LOW-INCOME PREGNANT WOMEN AND CHILDREN.

(a) MANDATORY COVERAGE.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting in lieu thereof the following new subparagraph:

"(B) children who have not attained 6 years of age, and"; and

(2) in paragraph (2), by striking subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) For purposes of paragraph (1), with respect to individuals described in subparagraphs (A) and (B) of that paragraph, the State shall establish an income level which is a percentage equal to 185 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(l)(4) of such Act (42 U.S.C. 1396a(l)(4)) is amended—

(A) in subparagraph (A) by striking "infants under age 1" and inserting in lieu thereof "children under the age of 6", and

(B) in subparagraph (B) by striking "provided under clause (ii) of such paragraph" and inserting in lieu thereof "provided under such paragraph".

(2) Section 1902(a)(10)(A)(i)(IV) of such Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV)) is amended by striking "minimum".

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990.

(2) For purposes of the amendment made in subsection (a)(1) the term "6 years of age" shall be considered to be "4 years of age" with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990, and ending before January 1, 1991.

SEC. 3. OPTIONAL COVERAGE OF CERTAIN LOW-INCOME CHILDREN.

(a) OPTIONAL COVERAGE.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is further amended—

(1) in paragraph (1), by striking subparagraph (C) and inserting in lieu thereof the following new subparagraph:

"(C) at the option of the State, children who have attained 6 years of age but have not attained 19 years of age,"; and

(2) in paragraph (2)(B), by striking ", or if less, the percentage established under subparagraph (A)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990.

SEC. 4. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) IN GENERAL.—(1) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall enter into agreements with 3 States submitting applications in accordance with subsection (b)(1) for the purpose of conducting demonstration projects to study the effect on access to health care, private insurance coverage, and costs of health care when such States are allowed to extend benefits under title XIX of the Social Security Act, either directly or in the same manner as alternative assistance authorized in section 1925(b)(4)(D), to certain children who because of a preexisting medical condition or who having exhausted health benefits available under private insurance can be considered to be medically uninsurable (as defined by the Secretary) and who are not otherwise qualified to receive benefits under such title.

(2) The Secretary shall also enter into an agreement with one state submitting an application in accordance with subsection (b)(2) for the purpose of conducting a demonstration project to study the effect on access to health care, private insurance coverage, and costs of health care when such State is allowed to extend benefits under title XIX of the Social Security Act, either directly or in the same manner as alternative assistance authorized in section 1925(b)(4)(D), to certain children who are members of families whose incomes are below the level described in subsection (b)(2), but who are not otherwise qualified for benefits under such title.

(b) PROJECT REQUIREMENTS.—(1) Each State applying to participate in a demonstration project under subsection (a)(1) shall assure the Secretary that only those children who are determined medically uninsurable by the Secretary under subsection (a)(1) shall be eligible to participate in such demonstration project.

(2) Each State applying to participate in the demonstration project under subsection (a)(2) shall assure the Secretary that eligibility shall be limited to—

(A) children who have not attained 6 years of age who are in families with income below 185 percent of the income official poverty line (as described in subsection (c)(1)); and

(B) children who have attained 6 years of age but who have not attained 20 years of age who are in families with income below 100 percent of the income official poverty line (as described in subsection (c)(1)).

(3) The Secretary shall further provide in conducting demonstration projects under this section that if one or more of such demonstration projects utilizes employer coverage as allowed under section 1925(b)(4)(D) of the Social Security Act that—

(A) such project shall require an employer contribution; and

(B) at least one of such projects shall be limited to employers with 50 or less employees.

(c) PREMIUMS.—Children eligible to participate in such demonstration projects whose family income level is—

(1) below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved shall pay no premium;

(2) between 100 and 200 percent of the income official poverty line (as described in paragraph (1)) shall pay a premium equal to the lesser of—

(A) the actuarial value of the coverage, or

(B) 3 percent of the family's average gross monthly earnings (less the average monthly costs for child care); and

(3) over 200 percent of the income official poverty line (as described in paragraph (1)) shall pay a premium equal to the actuarial value of the coverage.

(d) DURATION.—A demonstration project conducted under this section shall be commenced not later than July 1, 1990, and shall be conducted for a 3-year period unless the Secretary determines that a State conducting a project under this section is not in substantial compliance with the requirements contained in subsection (b).

(e) WAIVER.—The Secretary where he deems appropriate may waive—

(1) the statewideness requirement described in section 1902(a)(1); and

(2) the requirements described in section 1902(a)(10)(A).

(f) LIMIT ON EXPENDITURES.—The Secretary in conducting the demonstration projects described in this section shall limit the amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than—

(1) $100,000,000 in fiscal year 1990; and

(2) $250,000,000 for fiscal years 1991 and 1992 combined.

(g) EVALUATION AND REPORT.—(1) For each demonstration project conducted under this section, the Secretary shall conduct an evaluation on the effect of the project with respect to—

(A) access to health care;

(B) private health care insurance coverage; and

(C) costs with respect to health care.

(2) The Secretary shall prepare and submit to the Congress an interim report containing a summary of the evaluations conducted under paragraph (1) not later than January 1, 1992, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1994.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective upon the date of enactment of this Act.

SEC. 5. MODIFICATION OF ASSET TEST FOR PREGNANT WOMEN.

(a) IN GENERAL.—Section 1902(l)(3) of the Social Security Act (42 U.S.C. 1396a(l)(3)) is amended by inserting before the semicolon at the end of subparagraph (B) the following: "(except that, for purposes of this subparagraph, there shall be excluded from the term 'resources', without regard to the value thereof, any automobile, household goods, personal effects, burial spaces, and insurance policies)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to eligibility for medical assistance on or after January 1, 1990.

SEC. 6. PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN REQUIRED.

(a) IN GENERAL.—Section 1902(a)(47) of the Social Security Act (42 U.S.C. 1396a(a)(47)) is amended by striking "at the option of the State,".

(b) DAY OF ELIGIBILITY MODIFIED.—Section 1920(c) of such Act (42 U.S.C. 1396r-1(c)) is amended by striking paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall notify the State agency of the determination within 5 working days after the date on which the determination is made.".

(c) CONFORMING AMENDMENTS.—Section 1920 of such Act (42 U.S.C. 1396r-1) is amended—

(1) in subsection (a) by striking "may provide" and inserting in lieu thereof ", in order to meet the requirement of section 1902(a)(47), must provide"; and

(2) in subsection (b)(1)(B)—

(A) by inserting "or" at the end of clause (i);

(B) by striking ", or" at the end of clause (ii) and inserting in lieu thereof "; and"; and

(C) by striking clause (iii).

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to pregnant women who are qualified to become presumptively eligible on or after January 1, 1990.

SEC. 7. MANDATORY ELIGIBILITY, CONTINUITY OF CARE AND TEMPORARY EXTENSION OF MEDICAID ELIGIBILITY.

(a) CONTINUOUS ELIGIBILITY FOR PREGNANT WOMEN.—Section 1902(e)(6) of the Social Security Act (42 U.S.C. 1396a(e)(6)) is amended—

(1) by striking "At the option of the State, in" and inserting in lieu thereof "In"; and

(2) by striking "the State plan may nonetheless treat" and inserting in lieu thereof "the State plan shall treat".

(b) CONTINUOUS ELIGIBILITY FOR CERTAIN CHILDREN.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)) is amended by adding at the end thereof the following new paragraph:

"(11)(A) In the case of a child who has not attained 6 years of age and who is determined eligible for medical assistance under this title (other than a child eligible for such assistance because such child is receiving aid under part A or E of title IV or under title XVI), such child shall remain eligible for medical assistance under this title after each determination of eligibility for a period of 6 months and no redetermination of such child's eligibility shall take place for a period of 6 months from the determination of eligibility of such child, regardless of any change in income or resources of the family of which such child is a member.

"(B) With respect to a child who has not attained 6 years of age and who is receiving aid under part A or E of title IV or under title XVI and who is determined to be no longer eligible for such aid, the State may not discontinue medical assistance under this title for such child until the State has determined that such child is not eligible for medical assistance under this title on a basis other than the receipt of aid under such parts or title.".

(c) EXTENSION OF MEDICAID ELIGIBILITY.—Section 20(b) of the Child Support Enforcement Amendments of 1984 is amended by striking "and before October 1, 1989".

(d) EFFECTIVE DATE.—(1) The amendments made by subsections (a) and (b) shall become effective with respect to eligibility determinations for medical assistance under title XIX of the Social Security Act on or after January 1, 1990.

(2) The amendment made by subsection (c) shall become effective upon the date of enactment of this Act.

SEC. 8. ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end thereof the following new subsection:

"(s) In order to meet the requirements of subsection (a)(53), the State plan must provide that payments to hospitals under the plan—

"(1) for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 18 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall—

"(A) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

"(B) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

"(C) not be limited by the imposition of dollar limits with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged); and

"(2) shall be made to a hospital in another State for inpatient hospital services furnished by such hospital to children (covered under the State plan) who have not attained the age of 19 years at the rates paid for such services in the State in which the hospital is located, unless the States involved have entered into an agreement providing for payment on another basis or rate.".

(b) CONFORMING AMENDMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (51);

(2) by striking the period at the end of paragraph (52) and by inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(53) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990.

SEC. 9. REQUIRED COVERAGE OF NURSE PRACTITIONER SERVICES.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (20), by striking "and";

(2) by redesignating paragraph (21) as paragraph (22); and

(3) by inserting at the end of paragraph (20) the following new paragraph:

"(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;".

(b) CONFORMING AMENDMENT.—Section 1902 (a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A)) is amended by striking "(1) through (5) and (17)" and by inserting in lieu thereof "(1) through (5), (17) and (21)".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after January 1, 1990.

SEC. 10. OPTIONAL STATE COVERAGE OF HOME OR COMMUNITY BASED SERVICES TO CERTAIN CHILDREN.

(a) STATE OPTION PROVIDED.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) as amended by this Act, is further amended—

(1) by redesignating paragraph (22) as paragraph (23); and

(2) by inserting at the end of paragraph (21) the following new paragraph:

"(22) home or community based services (as described in section 1915(c)(1)) for children—

"(A) who have not attained the age of 18 years; and

"(B)(i) who have acquired immune deficiency syndrome, or

"(ii) who are medically dependent on a ventilator for life support;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to services furnished on or after January 1, 1990.

SEC. 11. OPTIONAL STATE COVERAGE OF HOME VISITOR SERVICES.

(a) STATE OPTION PROVIDED.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) as amended by this Act, is further amended—

(1) by redesignating paragraph (23) as paragraph (24); and

(2) by inserting at the end of paragraph (22) the following new paragraph:

"(23) home visitor services as prescribed by a physician and furnished by a registered nurse to infants during their first 6 months of life who have medical conditions which require treatment with life sustaining medications or equipment or technologically assisted feeding; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to services furnished on or after January 1, 1990.

SEC. 12. LIMIT ON NUMBER OF INDIVIDUALS ALLOWED TO PARTICIPATE IN HOME AND COMMUNITY BASED PROGRAMS UNDER WAIVERS INCREASED.

(a) IN GENERAL.—Section 1915(c)(10) of the Social Security Act (42 U.S.C. 1396n(c)(10)) is amended by striking "200" and inserting in lieu thereof "500".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to waivers granted or renewed under section 1915(c) of the Social Security Act on or after January 1, 1990.

SEC. 13. ALLOCATION OF PAYMENTS AND REQUIREMENTS RELATED TO SUCH PAYMENTS UNDER THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT MODIFIED.

(a) INCREASED AUTHORIZATION.—Subsection (a) of section 501 of the Social Security Act (42 U.S.C. 701) is amended by striking "$553,000,000" and all that follows through "fiscal year 1989" and inserting in lieu thereof "$561,000,000 for fiscal year 1989, and $711,000,000 for fiscal year 1990".

(b) REALLOCATION OF PAYMENTS.—Title V of such Act (42 U.S.C. 701 et seq.) is amended by striking section 502 and inserting in lieu thereof the following new section:

"ALLOTMENTS TO STATES AND FEDERAL SET-ASIDE

"SEC. 502. (a)(1) Of the amounts appropriated under section 501(a) for a fiscal year the Secretary shall retain an amount equal to 15 percent thereof for the purpose of carrying out (through grants, contracts, or otherwise) the projects and programs described in this subsection, including—

"(A) special projects of regional and national significance, training, and research;

"(B) the funding of genetic disease testing, counseling, and information development and dissemination programs; and

"(C) comprehensive hemophilia diagnostic and treatment centers.

The authority of the Secretary to enter into any contracts under this title is effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

"(2) For purposes of paragraph (1)—

"(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children;

"(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof; and

"(C) amounts retained by the Secretary for special projects of regional and national significance may be used to make grants, contracts with, or jointly financed cooperative agreements with, public or private organizations for projects—

"(i) for the screening of infants for sickle-cell anemia and other genetic disorders,

"(ii) to promote access to primary health services for children and community based service networks and case management services for children with special health care needs,

"(iii) promoting the use of outpatient and community based services (including day care) for children with special health care needs who utilize substantial amounts of inpatient hospital care;

"(iv) described in paragraph (3); and

"(v) to achieve the purposes set forth in section 501(a), based on priorities established by the Secretary.

"(3)(A) The Secretary shall conduct demonstration projects to evaluate and extend basic health insurance coverage to children under the age of 19 who are not covered by other public or private programs. The Secretary may enter into agreements (subject to the provisions of subparagraph (B)) to provide such coverage through public and private cooperative arrangements sponsored by organizations such as (but not limited to) (i) school based plans; (ii) plans operated under the auspices of nonprofit entities offering health insurance; and (iii) plans operated by nonprofit hospitals.

"(B) The agreements entered into between the Secretary and organizations under subparagraph (A)(ii) shall provide—

"(i) that such agreements will be in effect for a period of 3 years subject to the provisions of this paragraph;

"(ii) for non-Federal sources to fund such projects at a level not less than—

"(I) 50 percent in the first year of such agreement,

"(II) 65 percent in the second year of such agreement, and

"(III) 80 percent in the third year of such agreement;

"(iii) that with respect to an organization which at the time of entering into such agreement is conducting a project similar to the one described in this paragraph that such organization must maintain its current level of non-Federal funding at such current level unless such level is less than the applicable level described in clause (ii); and

"(iv) that organizations may not with respect to the health care plan provided by such organizations under this paragraph—

"(I) restrict enrollment in such plan on the basis of a child's medical condition, and

"(II) impose waiting periods or exclusions for preexisting conditions.

"(C) The Secretary in conducting demonstration projects under this paragraph shall provide in his agreements that all such organizations described in subparagraph (A) may charge a premium to individuals enrolling in the health care plan provided by such organizations.

"(D) The demonstration projects conducted under this paragraph shall evaluate the effects of such coverage on—

"(i) the access to health services,

"(ii) the availability of insurance coverage to participating children and their families,

"(iii) the characteristics of participating children and their families, and

"(iv) health care costs.

"(E) The Secretary shall publish no later than March 1, 1990, criteria governing the eligibility and participation of organizations in the demonstration projects conducted under this paragraph.

"(4) No funds may be made available by the Secretary under this subsection unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this title.

"(b) From the remaining amounts appropriated under section 501(a), the Secretary shall allot to each State which has transmitted a description of intended activities and statement of assurances for the fiscal year under section 505, an amount determined as follows:

"(1) The Secretary shall determine, for each State—

"(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 501(b)(1)), other than for any of the projects or programs described in subsection (a), from appropriations for fiscal year 1981,

"(ii) the proportion that such amount for that State bears to the total of such amounts for all the States, and

"(B)(i) the number of low-income children in the State, and

"(ii) the proportion that such number of children for that State bears to the total of such numbers of children for all the States.

"(2) Each State beginning on or after January 1, 1990, must use not less than 30 percent of its allotment for services for children with special health care needs, including family centered community based coordinated care, as defined by the Secretary.

"(3) Each State beginning on or after January 1, 1990, must use not less than 5 percent of its allotment for any or all of the following: primary health services demonstration projects and programs for children, the development of community based service networks and case management services for children with special health care needs, and projects for the screening of infants for sickle-cell anemia and other genetic disorders.

"(c)(1) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 505 for the fiscal year or because some States have indicated in their descriptions of activities under section 505 that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

"(2) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 506(b)(2), such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.".

(c) STATEWIDE NEEDS ASSESSMENT REQUIRED.—Section 505 of such Act (42 U.S.C. 705) is amended—

(1) in paragraph (1)—

(A) by striking "and (D)" and inserting in lieu thereof "(D)"; and

(B) by striking "such payments" and inserting in lieu thereof "such payments, and (E) a Statewide needs assessment as described in paragraph (3); and

(2) by inserting at the end of paragraph (2) the following new paragraph:

"(3) A statewide needs assessment described in this paragraph shall include—

"(A) a needs assessment on maternity and infant care, preventive and primary care for children, and services for children with special health care needs;

"(B) a plan for meeting the needs identified by the assessment; and

"(C) a description of how the funds received under this title will be utilized for the coordination and direct provision of services under the plan.".

(d) ADDITIONAL STATE ASSURANCES REQUIRED.—Section 505(2) of such Act (42 U.S.C. 705(2)) is amended—

(1) in subparagraph (D), by striking "and" at the end thereof;

(2) in subparagraph (E), by striking the period, and inserting in lieu thereof a semicolon; and

(3) by inserting after subparagraph (E) the following new subparagraphs:

"(F) the State will develop the annual report described in paragraph (1) with a State maternal child health advisory board appointed by the State official responsible for administering the State's program under this title and such board shall—

"(i) include representatives of families, State Medicaid and other related State agencies, health care providers, voluntary health and disability groups, and other appropriate participants;

"(ii) conduct public hearings;

"(iii) provide an annual written review and comments on the administration of the State's program under this title along with suggestions on improving the delivery of maternal and child health services under

such program, to be included as part of such annual report; and

"(iv) participate in the planning and development of services provided under this title, including family centered community based coordinated care for children with special health care needs described in subparagraph (G);

"(G) the State for fiscal years 1990, 1991, and 1992 in administering the State's program under this title will—

"(i) plan and develop a system of family centered community based coordinated care for children with special health care needs in collaboration with other programs, including—

"(I) programs receiving funds under title XIX,

"(II) Federal special education programs,

"(III) voluntary health service agencies,

"(IV) practicing health care professionals; and

"(V) parent groups; and

"(ii) designate a coordinator of services to children with special health care needs; and

"(H) the State will—

"(i) provide for the development and maintenance of a consolidated data base containing information describing medical and support service providers operating and available in the State to meet the needs of chronically ill children;

"(ii) provide for a toll-free telephone number for the use of parents with chronically ill children to access the information described in clause (i); and

"(iii) annually update and ensure the accuracy of the data base described in clause (i).".

(e) ANNUAL REPORTS EXPANDED.—Section 506(a) of such Act (42 U.S.C. 706(a)) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Each State shall include as part of the annual reports prepared and submitted under paragraph (1), information on—

"(A) the extent to which the State has met or not met the needs of individuals with respect to specific services;

"(B) the specific services provided by the State under this title, including—

"(i) the number of women, infants, and children served,

"(ii) the characteristics of the persons served,

"(iii) discharge planning, and

"(iv) family centered community based coordinated care for children with chronic illnesses;

"(C) information related to health status outcomes, including infant morbidity and mortality; and

"(D) the amount of funds allotted by the State for the purpose of developing the family centered community based coordinated care described in section 505(2)(G).".

(f) FEDERAL ADMINISTRATION AND ASSISTANCE.—Section 509(a) of such Act (42 U.S.C. 709(a)) is amended—

(1) in paragraph (5) by striking "and" at the end thereof;

(2) in paragraph (6) by striking the period and inserting in lieu thereof "; and" and

(3) by adding at the end thereof the following new paragraphs:

"(7) assisting States in the development of care coordination systems;

"(8) promulgating regulations to require consistent and accurate reporting formats to assure accountability in the use of funds under this title; and

"(9) developing and distributing to the State agency (or agencies) designated by each State a national directory listing by State the toll-free telephone numbers described in section 505(2)(H).".

(g) STATE FUNDING REQUIREMENT.—A State receiving funds for maternal and child health services under title V of the Social Security Act shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in 1989.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning and annual reports made after the date of enactment of this Act.

SEC. 14. ANNUAL REPORT ON HEALTH STATUS OF CHILDREN.

Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end thereof:

"ANNUAL REPORT ON HEALTH STATUS OF CHILDREN

"SEC. 1142. The Secretary shall, not later than January 1, 1991 and for every 12-month period thereafter, publish an annual report on the health status of the children of the United States. Such report shall include—

"(1) information summarizing the States' annual reports prepared and submitted to the Secretary pursuant to section 506(a)(1);

"(2) statistics on infant mortality (including annual percentages of decrease or increase in such) by State and population group;

"(3) information on and statistics related to the number of children, by State, participating in early and periodic screening, diagnostic, and treatment services as defined in section 1905(r);

"(4) information and statistics with respect to the increase or decrease, by State, in the delivery of maternity and prenatal care services;

"(5) information and statistics with respect to child morbidity, infectious diseases, and mortality;

"(6) information on the sources and extent of health insurance (both private and public) provided to children;

"(7) information on the utilization and costs of health services provided to children;

"(8) information and statistics on catastrophic illnesses among children; and

"(9) information and statistics on immunization rates with respect to children.".

SEC. 15. UNIFORM APPLICATION FOR MEDICAID.

The Secretary of Health and Human Services shall not later than January 1, 1991, develop and make available to States a model uniform application for benefits under title XIX of the Social Security Act for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act, and who are not institutionalized. The model application developed under this section shall be made available to States as specified in the preceding sentence, but, such model shall not be required to be adopted by States as part of their State plan.

SEC. 16. REQUIREMENTS OF THE SECRETARY.

(a) DEFINITION OF MEDICALLY HIGH RISK PREGNANCY AND CHILDREN TO BE DEVELOPED.—(1) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall in consultation with appropriate professional health care related groups develop definitions of medically high risk pregnancy and children at a high risk of medical problems. In developing such a definition the Secretary shall consider, among other factors, low birthweight and placement in foster care.

(2) The Secretary shall report to Congress on the definition developed under paragraph (1) along with such further information or comments as the Secretary may deem relevant not later than March 1, 1990.

(b) DEFINITION OF MEDICALLY UNINSURABLE CHILDREN TO BE DEVELOPED.—(1) The Secretary shall in consultation with appropriate professional health care groups and health insurers develop alternative definitions of medically uninsurable children.

(2) The Secretary shall report to Congress on the definition developed under paragraph (1) along with such further information or comments as the Secretary may deem relevant not later than March 1, 1990.

(c) MODEL HEALTH BENEFIT PACKAGE FOR PREGNANT WOMEN AND CHILDREN TO BE DEVELOPED.—(1) The Secretary shall in consultation with appropriate professional health care groups and consumers develop a model health benefit package for pregnant women and children through age 18. The package developed by the Secretary shall include (but not be limited to)—

(A) appropriately timed primary care visits (including visits for prenatal care, immunizations, screening, and followup treatment of health problems); and

(B) protection against catastrophic expenses for inpatient hospital care.

(2) The Secretary shall report to Congress on the health benefit package developed under paragraph (1) along with such further information or comments as the Secretary may deem relevant not later than March 1, 1990.

(d) REPORT ON IMPROVING PUBLIC HEALTH COORDINATION.—(1) The Secretary shall study different methodologies to improve the coordination between various public health programs, in particular the coordination of benefits provided under titles V and XIX of the Social Security Act, and the special supplemental food program (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(2) The Secretary shall report to Congress on the findings of the study conducted by the Secretary under paragraph (1) not later than March 1, 1990.

(3) The Secretary in conducting the study under paragraph (1) shall consult with the Governors of the various States and the Secretary of Agriculture.

SEC. 17. EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES.

(a) DEFINED.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end thereof the following new subsection:

"(r) The term 'early and periodic screening, diagnostic, and treatment services' means:

"(1) Screening services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care; and

"(ii) at such other intervals indicated as medically necessary to determine the existence of suspected physical or mental illnesses or conditions, without any requirement for prior authorization by the State; and

"(B) which shall at a minimum include—

"(i) a comprehensive health and developmental history, including assessments of physical and mental health and development and nutritional status;

"(ii) a comprehensive unclothed physical exam;

"(iii) appropriate immunizations according to age and health history;

"(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors); and

"(v) health education including anticipatory guidance.

"(2) Vision services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care; and

"(ii) at such other intervals, indicated as medically necessary to determine the existence of suspected physical or mental illnesses or conditions, without any requirement for prior authorization by the State; and

"(B) which shall at a minimum include diagnosis and treatment for defects in vision including eyeglasses.

"(3) Dental services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care; and

"(ii) at such other intervals, indicated as medically necessary to determine the existence of suspected physical or mental illnesses or conditions, without any requirement for prior authorization by the State; and

"(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

"(4) Hearing services—

"(A) which are provided—

"(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care; and

"(ii) at such other intervals indicated as medically necessary to determine the existence of suspected physical or mental illnesses or conditions, without any requirement for prior authorization by the State; and

"(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

"(5) Such other necessary health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(a)(43)(A) of such Act (42 U.S.C. 1396a(a)(43)(A)) is amended by striking "and treatment services as described in section 1905(a)(4)(B)" and inserting in lieu thereof "and treatment services as described in section 1905(r)".

(2) Section 1905(a)(4) of such Act (42 U.S.C. 1396d(a)(4)) is amended by striking subparagraph (B) and inserting in lieu thereof the following:

"(B) early and periodic screening and diagnostic services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21; and".

(c) DEMONSTRATION PROJECTS.—(1) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall conduct demonstration projects (as described in paragraph (2)) to increase participation in early and periodic screening and diagnostic services provided under title XIX of the Social Security Act.

(2) In carrying out the demonstration projects under this section the Secretary shall—

(A) examine and utilize different methods to increase provider and recipient participation in early and periodic screening and diagnostic services; and

(B) examine and utilize different methods to reduce reporting requirements related to early and periodic screening and diagnostic services.

(3) The Secretary shall compile the results of the projects conducted under this subsection and shall issue a report to Congress summarizing the findings of the Secretary with respect to such projects not later than July 1, 1991.

(d) ANNUAL PARTICIPATION GOALS.—The Secretary shall, not later than July 1, 1990 and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under title XIX of the Social Security Act in early and periodic screening and diagnostic services. Such goals shall along with statistics on each State's results in attaining such goals be included in the Secretary's annual report on the health status of children as provided in section 1140 of the Social Security Act, as amended by this Act.

(e) STUDY AND REPORT.—(1) With respect to current early and periodic screening and diagnostic services provided under title XIX of the Social Security Act the Secretary shall conduct a study of such services and requirements related thereto with respect to mental illness. The Secretary in conducting a study of such services shall consult with appropriate medical and mental health organizations involved in child health care.

(2) The Secretary shall report the results of the study, along with any recommendations for changes in the current requirements with respect to such services, to the Congress no later than December 31, 1990.

SEC. 18. SECTION 209(b) STATES PROHIBITED FROM DENYING MEDICAL ASSISTANCE TO CHILDREN 18 YEARS OF AGE OR YOUNGER RECEIVING BENEFITS UNDER SSI.

(a) IN GENERAL.—Section 1902(f) of the Social Security Act (42 U.S.C. 1396a(f)) is amended—

(1) by striking "and section 1619(b)(3)," and inserting in lieu thereof ", section 1619(b)(3) and paragraph (2) of this subsection,";

(2) by striking "(1)" and inserting in lieu thereof "(A)";

(3) by striking "(2)" and inserting in lieu thereof "(B)";

(4) by inserting "(1)" after "(f)"; and

(5) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of paragraph (1), a State shall provide medical assistance to any individual who is eligible for and receiving benefits under title XVI and who has not attained the age of 18 years.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to medical assistance provided on or after January 1, 1990.

SEC. 19. PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES.

(a) CODIFICATION OF ADEQUATE PAYMENT LEVEL PROVISIONS.—Section 1902(a)(30)(A) of the Social Security Act (42 U.S.C. 1396a(a)(30)(A)) is amended by inserting before the semicolon at the end the following: "and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population".

(b) REQUIRING STATE ADMINISTRATIVE ASSISTANCE TO PROVIDERS OF OBSTETRICAL AND PEDIATRIC SERVICES.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) as amended by this Act, is further amended—

(1) by striking "and" at the end of paragraph (52);

(2) by striking the period at the end of paragraph (53) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(54) provide to physicians, nurses, and other health professionals and clinics offering obstetrical or pediatric services under the State plan assistance in complying with billing and recordkeeping requirements mandated under this title, such assistance shall include—

"(A) training sessions in complying with administrative requirements under this section;

"(B) a State toll-free phone number for resolving administrative problems encountered in meeting administrative requirements with respect to obstetrical and pediatric services; and

"(C) appointing a State ombudsman for resolving the complaints of physicians, nurses, and other health professionals providing obstetrical and pediatric services.".

(c) REPORT OF SECRETARY ON STATE PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES.—The Secretary of Health and Human Services shall, not later than January 1, 1990, issue a report to Congress on current State practices with regard to the adequacy and timeliness of payment by States for obstetrical and pediatric services covered under the State plan and on factors influencing the number of days within which payment is made by States to providers of obstetrical and pediatric services.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990.

SEC. 20. HEALTH CARE PLANS FOR FOSTER CARE CHILDREN.

(a) IN GENERAL.—Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended—

(1) by inserting "(A)" before "The term"; and

(2) by adding at the end the following new subparagraph:

"(B) The case plan must also include a health care record for the child involved which includes information obtained from the child's parents, the foster care provider responsible for the daily care of the child, the child's health care providers, and other providers of care to the child, including the following:

"(i) A copy of a preplacement health care record that has been completed before the placement of the child in foster care (or within 30 days, in the case of emergency placement in foster care) and provided to the child's foster care provider to ensure that the provider is immediately made aware of the child's health and developmental needs that require continuing attention and services. The preplacement health care record shall, at a minimum, include the following:

"(I) A record of the child's health, mental health, and dental history, including allergies, current medications, immunizations,

and any known health and mental health problems.

"(II) Other information about matters concerning the child that may require emergency attention.

"(III) The names and addresses of the child's physician, dentist, and other providers of medical, mental health, developmental, and rehabilitation services.

"(ii) A record indicating that the child's foster care provider was advised of the child's eligibility under the early and periodic screening, diagnosis, and treatment program under title XIX.

"(iii) A health care plan for the child that is maintained by the agency indicating that the ongoing health, mental health, and dental needs of the child are being met. At a minimum, the health care plan shall include a record of the following:

"(I) Periodic health and dental examinations of the child.

"(II) Other diagnoses and treatment received by the child (including the dates of such examinations and treatments and the names and addresses of the health care providers).

"(III) Immunizations received by the child with a schedule of needed future immunizations.

"(IV) Known allergies of the child and prescribed treatment, if any.

"(V) Medications currently being taken by the child.

"(VI) Names and addresses of all health care providers, including those providing mental health, developmental, and rehabilitation services who have information regarding the child's current health care status.

"(iv) A record indicating that—

"(I) the foster care provider has been informed of its responsibilities related to maintaining and updating an abbreviated summary of the child's health care plan documenting the health, mental health, and dental services rendered to the child while in the care of the foster care provider;

"(II) the foster care provider and caseworkers assigned to the child clearly understand their responsibilities with respect to meeting the health care needs of the child; and

"(III) the agency has periodically reviewed the abbreviated summary of the child's health care plan which is maintained by the foster care provider to ensure that the child's health care plan is being adhered to and updated.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1990.

SEC. 21. USE OF MOST RECENT DATA IN CALCULATION OF FEDERAL MATCHING PERCENTAGE.

(a) IN GENERAL.—Section 1101(a)(8)(B) of the Social Security Act (42 U.S.C. 1301(a)(8)(B)) is amended—

(1) by striking "between October 1 and November 30" and inserting in lieu thereof "between April 1 and May 31"; and

(2) by striking "promulgation: *Provided*" and all that follows, and inserting in lieu thereof "promulgation. The Secretary shall publish in the Federal Register in October of each year a preliminary estimate for each State of the Federal percentage that will become effective in the following October.".

(b) EFFECTIVE DATE AND TRANSITION.—(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall apply to payments for quarters beginning on or after October 1, 1990.

(2) In July 1989 the Secretary of Health and Human Services shall promulgate the Federal percentage in accordance with section 1101(a)(8)(B) of the Social Security Act as amended by subsection (a), using the most recent data that was available as of May 31, 1989. For quarters beginning on April 1, 1990 and on July 1, 1990, the Federal percentage for each State shall be the higher of the Federal percentage that became effective on October 1, 1989, or the Federal percentage calculated under this paragraph.

SUMMARY OF THE MATERNAL AND CHILD HEALTH ACT OF 1989

OPTIMIZING MEDICAID ELIGIBILITY

1. Mandatory coverage of pregnant women and children up to age 6 with family incomes below 185 percent of the federal poverty level.

Under curent law, as of July 1, 1990 states must cover all pregnant women and infants with incomes below the federal poverty line. States are allowed to cover pregnant women and infants with family incomes below 185% of the federal poverty line and may impose a premium for the coverage of those with family incomes in the 150-185% of poverty range. States must cover children up to the age of 7 whose family income is below the state AFDC limit, and may cover children up to the age of 8 with family incomes below the federal poverty level.

This provision would require states to provide Medicaid coverage to low income pregnant women and young children, so that vital preventive health measures, such as prenatal care and immunizations, will be accessible during the child's early formative years. It would extend these vital services to over 2½ million infants and children who currently have no health insurance.

Provision:

This provision would be phased in over 2 years, with states being required to cover pregnant women and children up to the age of 4 by January 1, 1990 and children up to the age of 6 by January 1, 1991 with family incomes below 185% of the federal poverty level.

2. Optional coverage of children up to age 19 with family incomes below the federal poverty level.

Currently states must cover children up to the maximum age set by the state (ages 18-21) who qualify for cash assistance and may cover children up to age 21 whose family income is below the state AFDC level but do not meet other criteria for cash assistance.

This provision would extend health care coverage to many of the uninsured poor children for whom preventive and early care is postponed, an action which can result in significant life-long costs.

Provision:

States would be allowed to cover children up to 19 with incomes between the state AFDC level and the federal poverty line. If a state opts for this coverage, all children age 6 to 19 at a particular income level must be covered.

3. Coverage of children receiving SSI benefits.

Currently, 14 states use the Medicaid 209b option which allows them to use criteria more restrictive than SSI standards to establish Medicaid eligibility.

Provision:

This provision would require states to provide Medicaid coverage to all children under the age of 18 who are SSI recipients.

4. Mandatory presumptive eligibility for pregnant women.

Through the OBRA of 1986 states are permitted to receive federal Medicaid dollars to offer health care coverage to pregnant women who are presumed to meet income and assets criteria for participation in Medicaid ("Presumptive eligibility"). This coverage enables pregnant women to obtain ambulatory prenatal care for 45 days while their Medicaid applications are being processed. Currently 20 states have adopted the presumptive eligibility option.

Pregnant women that obtain prenatal care during the first trimester are more likely to deliver healthy, full-term babies. The time it takes for Medicaid eligibility determinations to be made can unnecessarily delay access to early prenatal care. This provision would allow more women to obtain prenatal care sooner during the critical first trimester, rather than having to wait until they have a Medicaid card.

Provision:

States would be required to extend presumptive eligibility to pregnant women for 45 days. The states would be required to provide documentation only at the end of the eligibility period, rather than at interim points as is currently required, thus reducing the amount of paperwork required of states.

5. Utilization of a less restrictive asset test for pregnant women.

Through the OBRA of 1986 states may choose whether to impose an asset test when making eligibility determinations for pregnant women applying for Medicaid only. Currently 37 states have no asset test.

Provision:

This provision would require states that choose to use an asset test when making eligibility determinations for pregnant women, to apply the asset tests to liquid assets only, therefore exempting such items as automobiles, household goods, personal effects, burial spaces, and insurance policies.

6. Continuity of care for pregnant women and children.

(a) Under current law states can continue Medicaid coverage for pregnancy-related services for 60 days after delivery to any woman who was on Medicaid during her pregnancy, regardless of changes in her financial status. The infant born to this woman remains eligible for the same time period. Currently 39 states have guaranteed pregnant women and their infants continuous eligibility until 60 days after delivery.

In states where this option has not been implemented, prenatal care can be fragmented for a pregnant woman who must undergo eligibility redeterminations due to fluctuations in her income.

Provision:

This provision would require states provide continuous eligibility for pregnant women and infants until 60 days after delivery.

(b) For infants and children qualifying for Medicaid and not cash assistance, continuity of care is frequently interrupted while states are performing the monthly or quarterly eligibility redeterminations used for children whose families receive AFDC payments.

Provision:

This provision would require states to determine eligibility no more frequently than every six months for children up to the age of 6.

(c) Currently, continuity of care is also interrupted when children no longer meet the eligibility requirements for AFDC cash assistance and a redetermination must be performed to see if they are still eligible for Medicaid on some other basis. The following provisions would maintain health care cov-

erage under Medicaid for young children while redetermination of their eligibility is being processed.

Provisions:

If a child below the age of 6 loses eligibility for cash assistance, the state may not discontinue Medicaid coverage until the state determines that the child is not eligible for Medicaid on some other basis. This clarifies current law.

A child who loses eligibility for AFDC cash assistance due to increased collection of child support payments, continues to be eligible for Medicaid for 4 months. This provision, which is due to expire on October 1, 1989, would be made permanent.

7. Development of a uniform Medicaid application.

Currently some pregnant women and children who are eligible for Medicaid, but not for cash assistance, are required to complete the same eligibility forms used by those applying for cash assistance. Under this provision the process of application for health coverage would be streamlined by having the Secretary of HHS develop a model Medicaid application for this special group, which could be shorter since less information is needed to make eligibility determinations for Medicaid than for cash assistance.

Provision:

The Secretary would be required to develop a uniform application for Medicaid benefits for individuals who are not institutionalized and do not receive cash assistance. States would have the option of using this application.

8. Medicaid buy-in demonstration projects.

This provision would extend health care coverage to low income uninsured children and to "medically uninsurable children" not on Medicaid by requiring the Secretary of HHS to conduct 4 demonstration projects where parents of these children could buy into the Medicaid program or could use Medicaid assistance to purchase employer-based health insurance.

Provision:

The Secretary of HHS would be required to conduct demonstration projects in 4 states to study the effect on access to health care, private insurance coverage, and costs of health care when Medicaid coverage is extended to children not otherwise qualified to receive benefits. Three of the demonstration projects would limit eligibility for participation to children who because of a pre-existing medical condition or who having exhausted health benefits under private insurance can be considered medically uninsurable, as defined by the Secretary. If a state conducting a demonstration project for "medically uninsurable" children chooses to buy into employer-based health insurance plans, they must limit buy-ins to firms of 50 or fewer employees. One of the demonstration projects would be directed at populations of children who are not "medically uninsurable", but are low income (family income below 185% of poverty if the child is below the age of 6 and below 100% of poverty if the child is ages 6 to 18). If a state conducting a demonstration project chooses to buy into employer-based health insurance, the state must require an employer contribution. Families participating in these demonstration projects whose income level is below the federal poverty level would pay no premium, those whose incomes are between 100 and 200% of poverty would pay a premium equal to the actuarial value of the coverage of 3% of the family's average gross monthly earnings (less the average monthly child care costs) whichever amount is less, and those with incomes over 200% of poverty would pay a premium equal to the actuarial value of the coverage. The Secretary could waive statewideness for these demonstration projects. The demonstration projects would begin no later than July 1, 1990 and be conducted for a three year period. Under this provision, the FY90 funds for these demonstration projects would be capped at $100 million and for FY91 and FY92 combined $250 million.

ENSURING ADEQUACY IN PROVIDER PARTICIPATION

1. Payment adjustments for hospital services to low income children.

In the Medicare Catastrophic Coverage Act (PL 100-360), financial protection was extended to hospitals serving a disproportionate share of low income patients by prohibiting states from imposing limits on Medicaid payments for lengthy stays and requiring Medicaid to make extra "outlier" payments for infants whose conditions are expensive to treat. The following provisions extend additional financial protection to hospitals for excessive costs they incur when providing care to pediatric Medicaid recipients.

Provisions:

States would be prohibited from placing a limit on the number of covered hospital days and outlier payments are required in States that use a prospective payment system for infants in any hospital and children under the age of 18 in a disproportionate share hospital.

States would be prohibited from imposing overall dollar limits on the amount of inpatient hospital services provided to children beginning before their first birthdays and in the case where a child reaches his first birthday in the hospital, ending with the date of discharge.

States would be required to pay for a child's care in an out-of-state hospital at the receiving state's rate, unless the involved states have negtotiated an alternative payment agreement.

2. Payment for obstetrical and pediatric services.

As Medicaid eligibility is extended to increasing numbers of pregnant women and children, efforts are also required to ensure that there exist an adequate number of obstetric and pediatric providers so that needed services can be obtained. In a recent survey by the National Governor's Association, three-fourths of State Medicaid and Maternal Child Health agencies said they had a signficant problem getting providers to take Medicaid patients. The reasons cited for low provider participation included: low reimbursement rates, excessive paperwork, and difficult with claims processing. The following provisions would correct many of the current claims processing problems and address the adequacy of provider payments.

Provisions:

Current Medicaid regulations that states must set Medicaid payment rates at levels which are sufficient to induce enough providers of obstetric and pediatric services to participate in the program would be written into the statute.

States would be required to provide obstetrical and pediatric care providers participating in Medicaid administrative assistance in complying with billing and recordkeeping requirements. At a minimum, this assistance must include training, establishment of a toll-free number where problems can be addressed, and the establishment of a State ombudsman position to expedite resolution of provider complaints.

The Secretary of HHS would be required to issue a report on the adequacy and timeliness of Medicaid payments to providers of obstetric and pediatric services.

EXPANSION OF SERVICES AVAILABLE TO CHILDREN

1. Nurse practitioner services.

As Medicaid eligibility is expanded to include more children it is essential to ensure that there are sufficient providers available to deliver the health care services which these children need. Certified pediatric and family nurse practitioners currently provide needed preventive and primary health care services to many children.

Provision:

Under this provision states would be required to reimburse directly the services of certified pediatric and family nurse practitioners which are allowed under the state practice laws.

2. Expansion of home and community based services.

Improved technology and treatment methods have increased survival rates and produced better outcomes for many low birth weight infants and children suffering from a variety of chronic illnesses. Once the acute treatment period has passed, these children no longer need to receive maintenance treatment in an inpatient hospital setting and provision of care in a home or community setting is possible. Under current law, to provide home and community based services to Medicaid recipients, states must apply for a waiver through a cumbersome process which limits the number of persons who can be included in the waiver. The following provisions expand the ability of states to deliver needed health care services to chronically ill children in non-institutional settings.

Provisions:

This provision would enable states to cover home and community based services for children with AIDS and children who are ventilator dependent in their Medicaid state plan.

The limit on the number of individuals a state can cover in a home and community based waiver would be raised from 200 to 500 individuals.

States would be able to cover home visitor services for infants up to the age of 6 months in their state plan if the children have medical conditions which require certain types ot technological support.

MATERNAL CHILD HEALTH SERVICES BLOCK GRANT

Since 1981, when 7 categorical health programs were consolidated into the Maternal and Child Health Services Block Grant, Congress has made few changes in the program other than increasing its level of authorization. MCH supports activities to improve the health status of mothers and children, including the provision of preventive and primary care services to pregnant women and children and treatment services to children with special health care needs. In order to receive MCH Block Grant funds, states must match $3 of their own funds for each $4 in federal funds received. Most of the MCH Block Grant funds are distributed directly to state governments, but a portion is set aside for the Federal Government to support special projects of regional and national significance (SPRANS). States decide which services they will offer with MCH Block Grant funds. Currently, very little information is available describing how states

are using their MCH money, how many individuals are served, or how the program meets the health care needs of American mothers and children. This lack of data hinders the sharing of information about innovative, effective state initiatives and precludes the development of information about the national health care needs.

Provisions:

1. Increased Authorization.

This provision would increase the MCH block grant's authorization level by $150 million to a level of $711 million in FY90. This level of funding is less than the $739 million which results when the 1981 MCH authorization level is trended forward using the Consumer Price Index, but given the current constrained fiscal environment it is not possible to reach that level. The increased authorization level, however, will maintain important health care services which are provided to mothers and children under this block grant.

The current state match rate required to receive federal MCH funds would remain unchanged. All MCH funds would be allocated between the States (85%) and the Federal government's special projects (15%). States would be required to use at least 30% of their MCH funds for children with special health care needs and 5% of their MCH funds for projects in sickle-cell anemia and genetic disorders screening, community-based service network and case management services for children with special health care needs, and primary health care services for children.

2. Improved planning process and reporting.

The states would be required to revise their planning process for the use of MCH funds to include a needs assessment, establishment of a State maternal child health advisory board, and preparation of an annual report on the program's accomplishments.

3. Development of information network.

States would be required to develop and maintain a consolidated data base containing information about the medical and support services and providers available in the state to meet the needs of chronically ill children and to provide a toll-free telephone number for parents to access this information.

4. New Federal SPRANS projects.

The Secretary would be required to use a portion of the Federal set-aside funding to conduct demonstration projects which utilize alternative approaches to providing health insurance coverage to children under the age of 19 who are not covered by other public or private programs. These projects could be sponsored by schools, nonprofit organizations offering health insurance, nonprofit hospitals, or other qualifying organizations. The Secretary would also be required to support projects which promote the use of outpatient and community based services for children with special health care needs.

ENHANCED UTILIZATION OF THE EPSDT PROGRAM

The Early and Periodic Screening, Diagnosis, and Treatment Program is a service that all states must offer to Medicaid eligible children from birth to age 21. The EPSDT program is designed to provide regularly scheduled well-child examinations of the general physical and mental health of infants and children. Currently the EPSDT services are underutilized with only an estimated 25-30% of eligible children participating in the program. This provision will require states to offer interperiodic screens and treatment for conditions found during those examinations, thereby promoting improved utilization of this valuable program.

Provisions:

1. Codification of regulatory requirements.

Currently, most of the requirements of the EPSDT program appear only in the regulatory form. This provision would codify the regulations and assure that key elements of the program could only changed by legislative action.

2. Inclusion of interperiodic screens.

Under current regulation states have developed EPSDT periodicity schedules which specify the number of diagnostic visits children should obtain at various age levels. This provision would require states to offer EPSDT screening whenever a child demonstrates a medical, dental, or mental health problem, rather than only at the times indicated by the periodicity schedule.

3. Required treatment.

Appropriate treatment of conditions diagnosed during the screening process is included in the EPSDT program. Currently, states must provide certain treatment services to children participating in the EPSDT program and have the option of providing other treatment services that are not included in their Medicaid state plan. This provision would require that states cover health care services needed to treat or correct the illnesses or conditions identified by the EPSDT screen, regardless whether they are part of the Medicaid state plan.

4. Increasing EPSDT participation.

This provision is aimed at increasing the participation in the EPSDT program by two methods.

The Secretary of HHS will conduct demonstration projects to increase provider and recipient participation in EPSDT.

The Secretary will establish annual state EPSDT participation goals, work with states to measure attainment, and report the results to Congress.

HEALTH CARE PLANS FOR FOSTER CARE CHILDREN

Currently foster care providers are not always informed about the health status of the children who are placed into foster care.

Provision:

This provision would require federally financed foster care children to have a preplacement health care record completed and then provided to the foster care provider before the child is placed in foster care or within 30 days in the case of an emergency foster placement. The foster care provider must be notified of the child's eligibility to participate in the EPSDT program. The health care record must be maintained while the child is in foster care.

REQUIREMENTS OF THE SECRETARY OF HEALTH AND HUMAN SERVICES

1. Annual report on the health status of children.

Currently, no government office compiles global data related to the health status of American children. This provision would assign that responsibility to the Department of Health and Human Services by requiring the Secretary to report annually on a series of health, utilization, and financing factors relating to access and cost of pediatric care. Trends in these indicators provide valuable guidance for health policy analysis and proposals.

Provisions:

The Secretary of HHS would be required to publish an annual report on the health status of the nation's children.

2. Coordination of programs serving children.

The various health programs which serve children are poorly coordinated at the Federal and the state levels, resulting in lack of coverage as well as duplication of efforts. This provision is intended to promote more efficient and cost effective use of resources.

Provision:

In consultation with the Governors and the Secretary of Agriculture, the Secretary of HHS would study ways to improve coordination between Medicaid, MCH, WIC, and other public health programs.

The recent plethora of studies on maternal and child health have indicated an absence of agreement on key definitions and content and frequency of needed health care services. In order to better target maternal and child health resources in the future, development of consensus on these concepts would be helpful.

Provision:

In consultation with appropriate professional groups, the Secretary of HHS would develop definitions of medically high risk pregnancy, medically high risk children, and medically uninsurable children.

In consultation with appropriate professional health care groups and consumers, the Secretary of HHS would develop a model health benefit package for pregnant women and children through the age of 18.

MODIFY TIMETABLE FOR CALCULATING FEDERAL MATCHING RATE FOR AFDC, MEDICAID, FOSTER CARE, AND ADOPTION ASSISTANCE.

Matching rates are currently annually recalculated in October, to be effective the following October. The formula is based on the state per capita income for the most recent 3-year period for which data are available. This provision would shorten the lag time between promulgation and the effective date, allowing for the use of more recent data that more accurately reflect the condition of the state's economy.

Provision:

The Secretary of HHS would be required to promulgate the recalculation in April, to be effective the following October (an estimate would be published each October, one year in advance of the actual change). This provision will become effective for all states for payments for quarters beginning on or after October 1, 1990. However, for the third and fourth quarters of fiscal year 1990 (beginning on April 1, and July1, 1990), those states that would have a higher Federal percentage under the new rule (using the most recent data available as of April 1989) shall be paid using that higher percentage.●

● Mr. CHAFEE. Mr. President, I am proud to be joining Senator BENTSEN in sponsoring the Maternal and Child Health Act of 1989, legislation to expand access to health care for millions of low-income children and pregnant women.

Making an investment in our children's health is the most important investment we can make as parents and as a nation. Yet, despite good intentions, our efforts have fallen short. There are 12 million children who have little or no access to health care. Their future and the future of this Nation is at stake unless we move to correct this problem now.

We have been making incremental steps toward correcting this problem over the past few years despite fiscal

restraints. We have made a difference—unfortunately, it is a small difference in comparison with what we must accomplish.

We must ensure that all low-income pregnant women, infants, and children have access to quality and affordable health care. Children deserve to be born healthy and get a good start in life. Low-income pregnant women must have access to prenatal care regardless of their income. Without that care, their babies may be born with serious physical and mental impairments.

There are several reasons why health care is unavailable to millions of children. First, our health care system has changed dramatically over the past 20 years. The hometown family physician who provides affordable primary and preventive care doesn't exist for many American families anymore. Health care costs have risen dramatically, making it extremely difficult for providers to deliver affordable care to low-income families.

Public and private efforts to protect families from catastrophic illnesses has contributed to the evolution of a sick care system instead of a health care system. This means that primary and preventive care are no longer emphasized as they should be, particularly for growing children.

Second, many State Medicaid programs reimburse health care providers below their actual cost of providing care. Therefore, more and more providers of care are turning away from serving Medicaid beneficiaries.

Third, malpractice premiums, particularly for obstetricians and gynecologists, are increasing at alarming rates. The malpractice problem has led to the practice of defensive medicine which has led providers to perform costly and often unnecessary procedures. This in turn results in inefficient use of precious health care resources.

Fourth, and most importantly, the existing Medicaid Program only covers a portion of children who are poor, and does even less for the near-poor. It is not necessary to have an income below the Federal poverty level to be unable to afford health insurance. About half of the 12 million uninsured children are in families with incomes above the Federal poverty level. That is a large part of what our legislation seeks to remedy. Although we can't solve all the problems of access to health care for children without structural changes to the system, we can make a very large step by enacting this legislation.

Our bill would expand Medicaid eligibility to cover these poor and near-poor children. States would be required to provide care to pregnant women, infants and children under age 6 with incomes below 185 percent of the Federal poverty level. This requirement would be phased in over 2 years. In addition, States would be given the option to cover children under age 18 who are below poverty.

This legislation also addresses the problems of asset tests for the purposes of determining eligibility for pregnant women and children. Immediate coverage of pregnant women is critical in preventing low-weight births. Therefore our bill would extend presumptive Medicaid eligibility to all pregnant women and streamline the process for States by delaying documentation requirements. The bill also excludes the value of necessities such as personal effects, household goods, and burial plots from the asset test for pregnant women. Eligibility determinations would be made on a one-time basis for pregnant women and their newborn children until the child is 2 months old and every 6 months for children under age 6 who are eligible for Medicaid but not cash assistance.

The Maternal and Child Health Act of 1989 also creates Medicaid buy-in demonstration projects to extend health care coverage to low income uninsured children and to "medically uninsurable children" ineligible for Medicaid. These demonstration projects incorporate the principles established in legislation called MedAmerica which I introduced in the last Congress. MedAmerica would cover all individuals below 100 percent of poverty and allow people between 100 and 200 percent of poverty to purchase health care coverage on a sliding scale basis. In addition, the bill would allow those individuals who had exhausted their private insurance or who because of a preexisting condition were unable to purchase insurance to buy Medicaid coverage at a reasonable rate. By demonstrating these principles in four projects in the United States, we will be able to determine the effectiveness and affordability of expanding the Medicaid Program to those who have no other way to obtain health care.

The bill also seeks to promote Medicaid participation by health care providers. The current barriers for health care providers are addressed in the legislation by a number of technical provisions.

Both the early and periodic screening, diagnosis, and treatment benefit [EPSDT] under Medicaid and the maternal and child health block grant would be improved by our legislation. Medicaid would cover any medically necessary service identified as necessary through the EPSDT Program. The MCH block grant's authorization level would be increased by $150 million. A portion of these funds must be used for children with special health care needs.

There are too many provisions that will significantly increase care for uninsured children to list. However, I urge my colleagues to take a good hard look at this legislation and see how much we can accomplish for the amount of money spent. This Medicaid expansion would cover nearly 2.5 million children by 1991, making it a wise and cost efficient use of funds. It is not only a good investment—it is what our children need and deserve.

I commend the chairman of the Finance Committee for his efforts to increase access to health care for our children. I am proud to join him in sponsoring this bill and hope that my colleagues in the Finance Committee and in the Senate will do the same.●

ADDITIONAL COSPONSORS

S. 58

At the request of Mr. BOSCHWITZ, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 58, a bill to amend the Housing and Community Development Act of 1987 to improve the enterprise zone development program, to amend the Internal Revenue Code of 1986 to provide tax incentives for investments in enterprise zones, and for other purposes.

S. 148

At the request of Mr. PRESSLER, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 148, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Golden Anniversary of the Mount Rushmore National Memorial.

S. 417

At the request of Mr. HEINZ, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 417, a bill to amend chapters 83 and 84 of title 5, United States Code, to expedite the processing of applications of Federal employees seeking retirement benefits, and for other purposes.

S. 435

At the request of Mr. REID, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 435, a bill to amend section 118 of the Internal Revenue Code to provide for certain exceptions from certain rules determining contributions in aid of construction.

S. 503

At the request of Mr. BAUCUS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 503, a bill to protect the ozone layer by reducing chlorofluorocarbons and halons, and for other purposes.

S. 656

At the request of Mr. GRASSLEY, the name of the Senator from Idado [Mr. MCCLURE] was added as a cosponsor of S. 656, a bill to amend the Internal Revenue Code of 1986 to restore the

deduction for interest on educational loans.

S. 685

At the request of Mr. METZENBAUM, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 685, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to clarify the applicability of rules relating to fiduciary duties in relation to plan assets of terminated pension plans and to provide for an explicit exception to such rules for employer reversions meeting certain requirements.

S. 805

At the request of Mr. MCCLURE, the names of the Senator from Washington [Mr. GORTON], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 805, a bill to amend the Food Security Act of 1985 to permit certain school districts to receive assistance to carry out the school lunch program in the form of all cash assistance or all commodity letters of credit assistance.

S. 849

At the request of Mr. DASCHLE, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 849, a bill to repeal section 2036(c) of the Internal Revenue Code of 1986, relating to valuation freezes.

S. 979

At the request of Mr. DASCHLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 979, a bill to provide grants for designating rural hospitals as medical assistance facilities.

S. 1076

At the request of Mr. BURDICK, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Colorado [Mr. WIRTH], the Senator from Wisconsin [Mr. KOHL], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1076, a bill to increase public understanding of the natural environment and to advance and develop environmental education and training.

S. 1091

At the request of Mr. GRAHAM, the names of the Senator from Alabama [Mr. SHELBY], the Senator from New York [Mr. D'AMATO], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 1091, a bill to provide for the striking of medals in commemoration of the bicentennial of the U.S. Coast Guard.

S. 1149

At the request of Mr. BAUCUS, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1149, a bill to amend title XVIII of the Social Security Act and the Internal Revenue Code of 1986 to limit application of the benefits and premiums of the Medicare Catastrophic Coverage Act of 1988 to those voluntarily enrolled in part B of the medicare program.

S. 1155

At the request of Mr. PRYOR, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1155, a bill to amend the Internal Revenue Code of 1986 to provide that certain educational and training grants to nonresident aliens shall be exempt from income tax, and for other purposes.

S. 1170

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 1170, a bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendants.

S. 1191

At the request of Mr. HOLLINGS, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1191, a bill to authorize appropriations for the Department of Commerce's Technology Administration, to speed the development and application of economically strategic technologies, and for other purposes.

SENATE JOINT RESOLUTION 64

At the request of Mr. SPECTER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Joint Resolution 64, a joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE JOINT RESOLUTION 129

At the request of Mr. DOLE, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 129, a joint resolution to provide for the designation of September 15, 1989, as "National POW/MIA Recognition Day."

SENATE JOINT RESOLUTION 133

At the request of Mr. SPECTER, the names of the Senator from Indiana [Mr. COATS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Vermont [Mr. JEFFORDS], the Senator from South Carolina [Mr. THURMOND], the Senator from California [Mr. WILSON], the Senator from Idaho [Mr. SYMMS], the Senator from Missouri [Mr. DANFORTH], the Senator from Oregon [Mr. HATFIELD], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Missouri [Mr. BOND], the Senator from New York [Mr. D'AMATO], the Senator from Delaware [Mr. ROTH], the Senator from Utah [Mr. GARN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Utah [Mr. HATCH], the Senator from Washington [Mr. GORTON], the Senator from Kansas [Mr. DOLE], the Senator from South Dakota [Mr. PRESSLER], the Senator from Oregon [Mr. PACKWOOD], the Senator from Idaho [Mr. MCCLURE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Wyoming [Mr. SIMPSON], the Senator from Alaska [Mr. STEVENS], the Senator from Ohio [Mr. METZENBAUM], the Senator from Nevada [Mr. REID], the Senator from North Dakota [Mr. BURDICK], the Senator from Arkansas [Mr. BUMPERS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Rhode Island [Mr. PELL], the Senator from Michigan [Mr. LEVIN], the Senator from Georgia [Mr. NUNN], the Senator from Illinois [Mr. SIMON], the Senator from Montana [Mr. BAUCUS], the Senator from Georgia [Mr. FOWLER], the Senator from Virginia [Mr. ROBB], the Senator from Alabama [Mr. HEFLIN], the Senator from Massachusetts [Mr. KERRY], the Senator from Michigan [Mr. RIEGLE], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Tennessee [Mr. GORE], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Colorado [Mr. WIRTH], the Senator from Arkansas [Mr. PRYOR], the Senator from Nebraska [Mr. EXON], the Senator from Hawaii [Mr. INOUYE], the Senator from New Jersey [Mr. BRADLEY], the Senator from Connecticut [Mr. DODD], the Senator from West Virginia [Mr. BYRD], the Senator from California [Mr. CRANSTON], the Senator from Ohio [Mr. GLENN], the Senator from Washington [Mr. ADAMS], and the Senator from West Virginia [Mr. ROCKEFELLER], were added as cosponsors of Senate Joint Resolution 133, a joint resolution designating October 1989 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 155

At the request of Ms. MIKULSKI, the names of the Senator from Virginia [Mr. WARNER], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Virginia [Mr. ROBB], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Indiana [Mr. LUGAR], the Senator from New Jersey [Mr. BRADLEY], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 155, a joint resolution designating June 23, 1989, as "United States Coast Guard Auxiliary Day."

SENATE RESOLUTION 136

At the request of Mr. CONRAD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Resolution 136, a resolution to express the sense of the Senate that the Committee on Appropriations should make the full appropriations authorized for carrying out programs for assessment and mitigation of

radon under the Toxic Substances Control Act.

SENATE CONCURRENT RESOLUTION 48—RELATING TO HUMAN RIGHTS VIOLATIONS IN CHINA

Mr. WILSON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 48

Whereas the Chinese government has arrested more than 1,000 students and other civilians in the aftermath of the brutal June 3, 1989 military assault on Tienanmen Square;

Whereas international human rights monitoring organizations such as Amnesty International and Asia Watch have documented incidences of arbitrary arrests, torture, and beatings by the Chinese police and military on a daily basis;

Whereas the Chinese government has reinstituted the death sentence as punishment for political dissent;

Whereas the Chinese government has re-established telephone hotlines and other local communications networks for the express purpose of identifying and imprisoning political dissidents throughout the country;

Whereas Chinese communist officials have uniformly denied that any abuses of human rights or activities to suppress the Chinese people's expression of their desire for democratic government have occurred since the massacre in Tienanmen Square;

Whereas regular citizens and grassroots associations within China that support democratic reform programs for their nation must be made aware of the American people's moral and political solidarity with them;

Whereas officials and agencies of the United Nations have remained silent in the face of the Chinese government's war against its own people;

Resolved by the Senate (the House of Representatives Concurring), That it is the sense of the Congress that—

(1) the Chinese government immediately release all men and women detained for the peaceful exercise of their fundamental human rights;

(2) the Chinese government publicize the names of all citizens arrested in connection with the recent protests as well as the reasons for their detainment so that they will not become the victims of torture or physical abuse while in custody;

(3) the President of the United States clearly inform the Chinese communist leadership that any resumption of normal diplomatic and military relations with China will directly depend on the Beijing government's releasing all those imprisoned for peacefully assembling to express their political beliefs and entering negotiations with leaders of the country's student democratic movement;

(4) the President of the United States publicly declare that he will carefully consider the extent to which the Chinese authorities act to restore basic human rights throughout their nation before he issues the required 1989 certification of China's eligibility to receive Most Favored Nation (MFN) trading status with the United States; and

(5) the United Nations General Assembly and Security Council condemn the repressive actions by the Chinese government and army and urge the communist party to open discussions with representatives of the political opposition.

The Secretary of the Senate shall transmit a copy of this resolution to the President and the Secretary of State immediately upon its passage.

Mr. WILSON. Mr. President, I rise to continue to focus the spotlight of American pressure on the Communist Government of the People's Republic of China for its appalling abuses of basic human rights, during the 2 weeks that have followed the Red Army's massacre of students in Tiananmen Square.

Mr. President, Amnesty International and Asia Watch both report that Chinese officials have arrested more than 1,200 people since the suppression of the student democratic movement on June 3. Several of my Chinese-American constituents in California, who have relatives within the People's Republic of China, have told me that eyewitnesses have observed Communist soldiers invade Beijing-area campuses and dormitories, dragging young students away to unreported and unknown fates. Men and women all over China have been handcuffed to trees, stuffed in prisons and, tragically, many stacked in the morgue.

Though police now have infested neighborhoods, a Stalinist-style telephone hotline has been provided to government informants so that they may expose dissenters. At least 11 civilians in Beijing and Shanghai have received death sentences during the past 7 days. In the meantime, Mr. President, with the sickening smell of bloodshed and the acrid fragrance of gunpowder still hanging heavy in the Beijing air, the Chinese Government continues the technique of the big lie. A spokesman smiling benignly at Tom Brokaw on Friday night denied that anyone had been crushed or anyone killed in Tiananmen Square.

As a result of this ongoing terror and the effort to shroud it from the world, by this truly Orwellian distortion, I am submitting a concurrent resolution to document the most repressive activities of the Chinese Government since the June 3 massacre and calling upon the Communist authorities to release all innocent civilians from imprisonment, as well as to publicize the names of those that they are holding and the reasons for their detention.

This concurrent resolution also urges the President to carefully consider the extent to which the Chinese authorities act to restore basic human rights before he certifies later this year that China can receive most-favored-nation trading status with the United States. Furthermore, it demands that the United Nations end its shameful silence on this tragic, tragic, and inexcusable repression of basic human rights.

In 1980 the President exercised his authority, under the Jackson-Vannick provision of Public Law 93-618, to grant China a waiver to the Trade Agreements Extension Act of 1951, denying all nonmarket countries most-favored-nation trading status with the United States. Although the Jackson-Vannick amendment permits the granting of this waiver if the country in question allows its citizens the right to emigrate, it also requires that the President ensure that our trade policies with totalitarian governments emphasize "the continued dedication of the United States to fundamental human rights."

China, Mr. President, received its waiver not because of its specific immigration policies, but as a result of a section of the Jackson-Vannik legislation giving the President authority to confer most-favored-nation status, if such an action "would substantially promote the policy objectives of the statute, including the general proposition of human rights."

It remains, clear, therefore, that at least the spirit, if not the letter, of existing law requires that the President consider a Communist nation's broader human rights record in determining whether to grant preferential treatment. But aside from the legal authority, we have the moral obligation to promote ideals, as well as interests, in the execution of American foreign policy.

If the President publicly states, as this concurrent resolution urges, that he will monitor Beijing's progress in restoring civil liberties as part of the process for his deciding on a renewal of China's most-favored-nation status, the Communist leadership will get a clear and early signal of America's intention not to apply the gentle rules of diplomacy to dictators who murder their own people.

We have seen in the history of the Jackson-Vannik legislation that the pressure that it brought to bear upon the Soviet leadership did, over a period of years, finally contribute to the relaxation of immigration standards that allow its Soviet Jewry and other persecuted minorities to leave the Soviet Union to travel to the United States, to Israel.

Moreover, I am convinced in my own mind it was part of the great public pressure that has led to whatever change seems to be occurring now in terms of a hoped-for democratization of the Soviet Union. But the United Nations, Mr. President, has adopted the even more gentle and abhorrent policy of silence. Its silence speaks volumes.

The General Assembly has not even given an indication of when it will meet to consider a resolution condemning the repression of the Chinese Government.

If this organization truly wishes to escape from the stigma of hypocrisy and cowardice, if it is at all sensitive to the charge that it imposes a double standard, one upon dictatorships and a far more stringent standard upon those nations that aspire to be described as democracies, it will put the power of the international diplomatic community behind the forces of liberation and democracy in China.

The students of Tienanmen Square, have shown that tanks and truncheons cannot bury the hopes for freedom that burn in the hearts of millions of courageous Chinese. From Beijing to Tibet, youngsters, workers, mothers, and monks all have taken a bold stand for liberty and pluralism before the gun barrels of the world's largest Communist power. Their voices heralded the promise of a new China where the old but enduring traditions of accountability from government, intimate families, free expression, and open markets can once again be not just a fond hope, but a realistic one for China. These voices have been shamefully suppressed. So now the obligation remains with us who are free not simply to enjoy our freedom in isolation, but instead to speak out and to tell the world that the proud people of China can and should be free as well. This resolution takes a modest step, but a necessary one in that direction, lest we too be accounted as part of that group who are simply too silent, too unconcerned with what has happened there to care. We need it and I ask my colleagues from both parties to enthusiastically support it.

The people of the United States I am convinced do not wish us to sit silent in the face of this kind of repression.

The world has grown much smaller since World War II. We are today shrunken, brought into far more intimate and immediate contact because of the marvel of modern communication, however much the present regime in Communist China seeks to shut down that kind of communication. It was notable in the most recent film footage that among the arrests made, among the other forms of repression, Communist soldiers were also photographed confiscating copying machines.

Mr. President, they cannot shut out the rest of the world. They cannot forever keep their people in bondage.

But if having the means to communicate we choose silence, if we do not communicate, not just our displeasure but our outrage, then we are not entitled to enjoy our own freedom. And our own freedom is threatened.

Mr. President, I urge my colleagues to join as cosponsors, I will seek expedited treatment because I think that we need not only to be heard but to be heard soon and unequivocally.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, first of all, let me just commend my colleague for his resolution. I am confident the Foreign Relations Committee and others will take a look at it very quickly. It is obviously a timely resolution.

AMENDMENTS SUBMITTED

ACT FOR BETTER CHILD CARE

KERREY AMENDMENT NO. 198

Mr. KERREY proposed an amendment to the bill (S. 5) to provide for a Federal program for the improvement of child care, and for other purposes, as follows:

On page 11, line 16, insert before the period the following: "or the State Child Care Board appointed and identified by the chief executive officer of the State as the lead agency under section 6(a).".

On page 21, line 15, insert before the period the following: ", or the State Child Care Board that is appointed by the chief executive and that meets the requirements of subsection (b), to serve as the lead agency.".

On page 21, between line 16 and 17, insert the following new paragraph:

(1) APPOINTMENT OF BOARD.—

(A) ESTABLISHMENT.—The chief executive officer of a Senate desiring to participate in the program authorized by this Act shall, if such chief executive officer has not designated a lead agency under subsection (a), establish a State Child Care Board that shall be composed of seven members to be appointed by such chief executive officer with the advice and consent of the legislature of such State.

(B) CHAIRPERSON.—The chief executive officer of the State shall designate a member of the Board to serve as chairperson. Such chairperson shall report directly to the chief executive officer and serve at the pleasure of such chief executive.

(C) TERMS, VACANCIES, COMPENSATION.—The chief executive officer of the State, with the advice and consent of the State legislature shall determine the terms of office of the members and chairperson of the Board established under subparagraph (A), the method to be used to fill vacancies on such Board, and the compensation to be received by such members.

(D) DUTIES.—The Board established under this paragraph shall act as the lead agency for the State for the purposes of this Act.

On page 21, line 17, strike out "(1)" and insert in lieu thereof "(2)".

On page 21, line 22, strike out "(2)" and insert in lieu thereof "(3)".

On page 22, line 3, strike out "(3)" and insert in lieu thereof "(4)".

On page 26, after line 25, add the following new subsection:

(e) REDESIGNATION.—The chief executive officer of a State may modify the original decision concerning the designation of a lead agency if such chief executive determines that the original designation is not appropriate.

On page 27, line 9, insert ", that shall be prepared by the lead agency or the State Child Care Board established under section 6(b)(1)," before "that is".

On page 27, strike out lines 12 through 15, and insert in lieu thereof the following new paragraph:

(1) LEAD AGENCY OR STATE CHILD CARE BOARD.—The plan shall identify the lead agency or the members of the State Child Care Board appointed under section 6(b)(1), the location of the offices of such Board, and shall contain a certification that the Board solicited input from the local advisory councils in preparing the plan.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Friday, July 14, 1989, beginning at 9:30 a.m., in 485 Russell Senate Office Building on amendments to the Indian Child Welfare Act.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AGRICULTURAL CREDIT

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Monday, June 19, 1989, at 1 p.m. to hold a hearing on the Credit Act of 1987; borrowers rights and restructuring provisions.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HEALTH FOR FAMILIES AND THE UNINSURED

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Health for Families and the Uninsured of the Committee on Finance be authorized to meet during the session of the Senate on June 19, 1989, at 10 a.m. to hold a hearing on proposals to provide universal access to health care.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 19, 1989, at 10 a.m. to hold a hearing on the authorization needs of the U.S. Coast Guard for fiscal years 1990 and 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, June 19, 1989, at 2

p.m. to hold a nomination hearing on Mark Edelman to be Deputy Administrator of the Agency for International Development.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

JOE'S GIFT

● Mr. LEVIN. Mr. President, on the floor of the U.S. Senate we hear often about the champions of sport, the men and women who fulfill their dreams and enrich our lives with the very hard work of their play. Behind these champions are stories of families and communities that build young people into engines of effort that go beyond sport. In the recent series that brought the Detroit Pistons to the championship of professional basketball, Joe Dumars was named most valuable player to the delight of his many fans in Michigan and across the country. A recent story in the Detroit News shows there was more than tenacious defense and clutch offense behind this young man, but also a family whose strength serves as an inspiration to us all. I ask that the story of this man and this remarkable family be printed in the RECORD.

The story follows:

[From the Detroit News, June 18, 1989]

JOE'S GIFT

(By Fred Girard)

NATCHITOCHES, LA.—The Red River spills out of the Arkansas badlands into the northwest corner of Louisiana, tumbles through Shreveport and the fields of cotton and soybean south of it, and into Natchitoches Parish.

That's pronounced *NACK-a-dish*, several young men shooting hoops on Martin Luther King Jr. Street helpfully instruct a stranger.

Up a hill and around a bend from the basketball court, a storm fence and a neat patch of lawn dotted with tall lilies fronts the simple, one-story brick house where Detroit Pistons' superstar Joe Dumars was raised.

Ophelia Jones Dumars holds court in the front room, amid a profusion of pictures of their nine grandchildren and the six sons and one daughter—Joe was the baby—she and her husband, Joe, raised.

One of the grandkids, Tiffany, 12, is playing secretary today, racing to and fro importantly, dirndl skirt aswirl. Two phone lines are ringing continuously, and Tiffany scribbles note after note on folded-up paper plates.

"It's Channel 31," she calls out. "They want Joe to be a judge in the Miss Black America contest."

Ophelia laughs. That doesn't sound like Joe's kind of night.

"I was up in Detroit not long ago, and after a game one night (John) Salley said to Joe, 'You want to go out? The girls are always asking for you—they know you're single.' Joe said right back, 'You tell the girls I said hello, 'cause I'm goin' home and go to bed.' "

Four rooms open off the living room—a small bedroom where Martha lived in splendid isolation as the only girl child in the family; a second, larger bedroom where all six brothers slept; the kitchen; and Ophelia and Joe's bedroom.

That's where the heart of the little brick house beats—and always has.

It's a small room, dominated by a large bed with brass headrails, an overstuffed easy chair and a color television set. Joe Dumars, 63, his arms and chest still roped with the muscles of a lifetimes of hard work, spends most of his time in this bed, both his legs amputated above the knee, a result of the ravages of diabetes.

He never has seen a Pistons game in person, but the television is equipped with cable. Joe Dumars plays every game broadcast as hard as his son, jerking in sympathetic body English, and taking off on one commercial by shouting at every critical point—to the vast amusement of his grandkids—"Gimme the ball! Gimme the ball!"

"I get too excited, but I just can't help myself," he said. "During the Chicago series, I was sitting here hollering and jumping around, and I started to get a shortness of breath, and my chest hurt . . . so I started hollering, 'Take me to a doctor.'

"I promised myself if the games got too exciting after that, I'd just pull the covers up over my head and forget about it.

"I try to level off, but I just can't sometimes. It gets so exciting, and these grandchildren hollering and cutting up in here—I just can't stop myself, so I just get with 'em."

It was from this bed that Joe arose at 4 o'clock every morning, from 1963 to 1985, to drive the 52 miles to Alexandria and his job as a grocery truck driver. He wouldn't get home until 10:30 or 11 at night, but whichever children were at home would be waiting for him—especially Joe, or "Boopsie," as they all called him, and sometimes still do. Joe and Boopsie, Ophelia says, would "talk father talk."

"He's crawl up here in the bed with me," Joe said, "and we had this little game we'd play. I'd say, 'Father to father, son to son; come here son, tell me everything you've done.' Well, he'd tell me everything, even the little bad things he did, and Tootsie—that's what we call his mama—she'd be listening to every word.

"Well, it didn't take him long to catch on to that. One day I tried to play our little game, and he said, 'Aw, Daddy, you just want Tootsie to whup me.' "

And as the little boy grew, the talks turned to more serious things . . . to Joe Dumars' idea of how success could be achieved.

"Attitude is everything," he said during an interview Thursday afternoon, the room dim and cool, the curtains pulled against the afternoon sun. It seemed natural for the reporter to sit on the end of the bed, where the Dumars children have been so many times; and the rest of the interview was conducted that way.

"Back in those days the places I went with my delivery truck were . . . rural." His eyes said the rest: Louisiana whites weren't used to seeing a black man drive up to their stores in a big delivery truck.

But Joe Dumars had been through worse. He had driven a truck for two years in the Army in Europe during World War II, landed on Omaha Beach on D-day, gotten lost with Patton in his lightning swoop into Germany, and given up his life for lost more than one. Bigots he could handle.

"My attitude was, let's be low-key. I have pride, but it's in here"—touching his chest. "I don't have to prove anything to the guy out on the street.

"If your attitude is good, you can make it. If it's bad, everywhere you turn you're going to run into problems."

Joe's own character was tempered but hurt. He was one of two sons, but for reasons he still doesn't understand, only his brother was raised by Bernice and Joe, his parents. Joe was sent to live with his grandmother, near the plot of ground where his house now sits, until he left school in the seventh grade to go to work.

"That stung me. For a long time, I fought with that. It was only when I got religion that I was finally able to work that out, to learn that I couldn't undo it, so I just had to accept. Its made me a better man.

"But I always said if I had children, I wouldn't treat them the way my Mom and Dad did."

Joe's method of child-rearing—he knows some disagree with it—was never to be satisfied.

"I've had people tell me, 'You never give your kids no play' "—cut them any slack, in today's idiom. "But I do that to prove a point.

"Whatever they did, I would say, 'You can do better.' Even their mother would say, 'You never give them any credit.' I'd say, 'you let me handle this.'

"And they would always try to prove to me that they're the best."

Young Joe certainly did. At first he was a football star, but he gave that up, his mother said, "one day when this boy hit him so hard he turned I don't know how many somersaults."

In his freshman year of high school, young Joe played junior varsity basketball for J.D. Garrett, a Natchitoches native who had been a running back with the New England Patriots of the National Football League.

Garrett recognized something in Joe right away. Not just talent, but drive. Joe Dumars was a kid with something to prove.

"He would practice real hard," recalled Garrett, still the coach at Natchitoches Central High, "and then he'd go get a bite to eat, and slip right back out and go to the college, and play with the college kids. When you see a kid practice that hard, you know he's on his way somewhere."

Young Joe was trying to impress his most beloved critic—and finally, he did.

"He would look me in the eye and say, 'Joe, I can play,' " his father recalls. "And I'd say, 'Boopsie, you can't hang with them big boys. They'll slap you up side the head, and you'll come home cryin'.'

"Last year, after the Chicago series, when he held that Michael Jordan so close and played so good, I said to him, 'Boopsie, you made me eat crow. You convinced me. You can play.' "

Old Joe felt as if a debt had been paid that day. He had done a father's job, and gotten the only reward he ever wanted.

"I've told all of my children, all you ever owe me is respect—and we owe each other love," he said.

"I don't want them to think they have to take care of me. I tell them, 'I want you to do just as good for your family as I did for y'all. No—do better. Then we're improving the Dumars family.

" 'But if I ever need a loaf of bread, you better come runnin' with two.' "

Across the street from the little brick house is one of Natchitoches' largest liquor

stores. People marvel that Dumars and his wife raised seven children who have never given their parents or their community the first speck of trouble.

Ophelia's explanation: "I wanted them to see just how liquor makes you act. Let them see that kind of life, and then decide to have a different one."

And old Joe's: "The thing we had in this family was love. We always stick together. I tell them if they ever get weak with one another, anyone can come in and break them apart. But if when one's down the others gives him a hand, you can't break a chain as strong as that.

"Being a black family, people just don't believe you can have that kind of love and affection. So many black families don't have that strong father figure."

Young Joe's hometown of 17,400, the oldest settlement in the 1714 Louisiana Purchase, plans to turn out in honor when he's finally able to return in two weeks or so.

Mayor Joe Sampite wasn't able to say on the record exactly what's planned, but hinted broadly that a street will be renamed in Joe's honor, and an addition made to the "Walk of Stars" on the sidewalk in front of a downtown bank, already featuring tributes to John Wayne, who made The Horse Soldiers there 30 years ago, and Dolly Parton and Sally Fields, who filmed the as yet unreleased Steel Magnolias there last year.

But nothing particularly impressed old Joe until he learned what young Joe planned to give him for a Father's Day gift: his championship ring, from the first title in the team's history, in which he was voted the Most Valuable Player.

"I was very surprised when he said that. I thought that was the thing he'd keep by him for the rest of his days," Joe said.

"But giving it to me is the same as if he'd kept it himself. We're that close.

"We're all that close."●

WEST POINT GRADUATION

● Mr. D'AMATO. Mr. President, on May 24 of this year the U.S. Military Academy at West Point, NY, graduated the class of 1989.

The Vice President of the United States delivered the commencement address to the graduating cadets. So we may all enjoy his poignant remarks, I ask that they be reprinted in the CONGRESSIONAL RECORD.

The remarks follow:

REMARKS BY THE VICE PRESIDENT, COMMENCEMENT ADDRESS TO THE U.S. MILITARY ACADEMY

General Palmer, Distinguished Guests, and men and women of the Corps of Cadets:

It is a high honor for me to address you today. Gathered here today are Americans from every walk of life, from backgrounds that reflect the richness and diversity of our nation's character and heritage. But despite this diversity, we all stand united behind one simple conviction: the belief that freedom can only be enjoyed by a people that is willing and able to defend it. That belief is the reason West Point exists. That belief—that commitment—is what West Point embodies.

Because this institution plays such a vital role in the life of our Nation and our world, I always paid special attention to the qualifications of the candidates I nominated for appointments to West Point during my 12 years in Congress. I am especially pleased that three of my nominees—Greg Buehler, Steven Calhoun, and Brett Jenkinson—are graduating today. And I'm proud to note that Greg and Steven made the Dean's List.

Today, I want to address special messages to three distinct groups in our audience—all of whom have dedicated themselves, in different ways, to the commitment to defend freedom.

First, I want to speak directly to the parents and loved ones who are with us here this morning. Your support for these superb young men and women, your understanding and encouragement, have been vitally important to these cadets. Now that they have earned the privilege of pinning the bar of gold on their Army green, you share not only in their joy, but also in the credit for their achievement.

As President Bush has emphasized time and again, America's families are the bedrock of our society. This is particularly evident on occasions such as these, which are, in effect, celebrations of our families and of their role in instilling values in succeeding generations of young Americans.

But your role is far from over; indeed, in some ways, it has only begun. For these men and women, as leaders in our armed forces, will face new and more demanding challenges in the years ahead. I ask, therefore, that you continue to provide them with the loving support that has been so important in their lives up to this point. They will need your reinforcement to get them through the tough times—and a cold dose of reality when everything seems to be going their way. And whatever the circumstance, always remember to be proud—very proud—that they have chosen to serve their country. There is no more noble calling.

Second, I want to express my appreciation for the staff and faculty here at the military academy. Once again, you have done a magnificent job. The task of educating and training our young men and women for a lifetime of service to our nation is crucially important to this country. Keep up the splendid work!

And, most important, to those of you graduating today, I offer my warmest congratulations. Your class has compiled an enviable record, both academically and in athletics. There are remarkable scholars in your midst—like Lisa Ann Shay, who was awarded a Marshall Scholarship at Cambridge; John Michael George, who received a Rhodes Scholarship at Oxford; and Andrew Fedorchek, who won both Hertz and National Science Foundation Fellowships. In football, your class has won a 20-15 victory over Navy that evened the series and captured the Commander-in-Chief trophy; in golf, you captured the eighth consecutive MAAC championship; in men's tennis, you captured the MAAC for the fourth time; and in women's tennis, you ranked second in the East. Not bad at all!

But all of these achievements are, of course, secondary to your basic achievement: you have successfully completed your vigorous course of study and training here, and are now ready to lead in the service of our country. I'm sure all of you recognize that you have been enormously privileged to attend this institution and to have the chance to join the "long gray line." Many talented candidates competed for appointments, but they were not as fortunate as you. You have received an education whose true value will become even more apparent with time. Moreover, you are about to realize the greatest privilege of all: leading our outstanding men and women in uniform.

As an officer in the regular Army, your service will be fulfilling and valuable for the Nation, but you will face some significant challenges. You will be challenged to lead young men and women from a variety of backgrounds in a very dangerous profession, the profession of arms. Those who volunteer for the ranks of the Army come from all walks of life in a diverse culture. Your challenge is to help them meet their potential in whatever they do.

You know that soldiers are pretty good judges of the ability and character of their commanding officers. So the only way to get a lot out of your units is to put a lot of time and effort into them. As General Douglas MacArthur once put it, "The respect, discipline, and self-confidence within a military unit, joined with fair treatment and merited appreciation from without. It will quickly wither and die if soldiers come to believe themselves the victims of difference or injustice on the part of their governments, or of ignorance, personal ambition or ineptitude on the part of their military leaders."

Fortunately, devotion to the profession of arms, and to the well-being of soldiers, is a legacy of West Point, and of those leaders in the long grey line that preceded you. It is their achievement, and their sacrifice, that you must never fail to honor.

General George Marshall, a great soldier-statesman, said this about the treatment of soldiers:

"The soldier is a man; he has rights; they must be made known to him and thereafter respected. He has ambition; it must be stirred. He has a belief in fair play; it must be honored. He has a need of comradeship; it must be supplied. He has imagination; it must be stimulated. He has a sense of personal dignity; it must be sustained. He has pride; it can be satisfied and made the bedrock of character once he is assured that he is playing a useful and respected role. He becomes loyal because loyalty has been given to him."

Never forget that our Army is part of a larger American democratic society where we measure soldiers not on the basis of gender, color or creed but rather on their performance. The President and I expect you to give soldiers the fair and equal treatment they deserve. More important, the American people expect the kind of dignified, respectful treatment of their sons and daughters in uniform that you will provide.

The American people are also united in the hope that never again will their sons and daughters be called upon to face the cruel test of battle. I know that everyone here today shares that hope. But everyone here also knows that the best way to prevent war is to think about it, and to prepare for it, in times of peace. As Alexander Hamilton put it in *the Federalist Papers* "To model our political systems upon speculations of lasting tranquility is to calculate on the weaker springs of the human character."

That is why, while hoping and working for peace, we need to keep our powder dry—and ample. We must maintain a military establishment that is respected by friend and adversary alike. And we must continue to support a strong national defense with military forces adequate to protect and defend our vital interests. Throughout your careers, you will be challenged to ensure that our forces remain prepared to carry out any mission assigned to them, ranging from disaster relief in our own country to conflict anywhere in the world.

You will also be challenged to develop and apply new methods for carrying out your responsibilities in battle. Changes in military technology have already resulted in long-range, conventional stand-off weapons systems like cruise missiles. Future developments in technology areas such as electrothermal propellants, hypersonic boost-glide vehicles, and multi-spectral sensors could cause, over the next 10-15 years, a revolution in military affairs. This will require us to develop new operational concepts, new military organizations and new methods of warfare. The Defense Department has initiated a new strategic planning tool called "Competitive Strategies" to help identify, develop, and field the weapons systems we need to be competitive with our major adversary, and to understand how those weapons might be used operationally.

Because of your background, education, and future assignments, you will be uniquely prepared to meet the challenges these changes will bring. Your education in the sciences and engineering allows you to comprehend the capabilities, and limits, of modern technology. Your military assignments will broaden your understanding of military innovation and operational requirements. And your military training provides you with deeper insights into the impact of human factors on warfare and with the leadership abilities to successfully deal with those factors. In sum, you have begun to develop the technical and operational skills to become effective battlefield leaders. You need to continue to hone those skills while simultaneously developing the necessary vision to contribute, as strategic thinkers, to the defense of our Nation.

And finally, you will be challenged to work long hours, to endure lengthy separations from your loved ones, and to risk your lives so that others may continue to enjoy the blessing of liberty. This is nothing new. But your challenge is to maintain your inner strength—your faith in our Creator and our Country—and to continue meeting the expectations of a leader throughout these periods of hardship.

You are prepared, perhaps better than you realize at this moment, to meet those challenges. West Point has imbued you with patriotic values, and developed your abilities as a leader. The education and training you have gained here will provide you with the necessary intellectual and moral foundation for a lifetime of service to our Country.

Since 1802, West Point has been the wellspring of bedrock values for over 40,000 graduated cadets. These values have developed in generations of Americans the strength to be a leader. You are privileged, because those values—gained here in the birthplace of our American military ethos—make up your moral, ethical, and professional character.

It is your character—shaped by your family and your loved ones to strive for ever-higher standards of excellence, and nurtured here at West Point—that will help you to be selfless in service, responsible in duty, and honorable in all things. It is your character that will give you the confidence to look your soldiers in the eye and say: "Follow me and do as I do." And it is your character that will enable you to instill those same fundamental values in your soldiers.

In closing, let me reiterate that your service to our Nation is a sacred privilege. Your service is sacred because our Nation's freedom, our way of life and our values ultimately depend on your ability to discharge your duties effectively and to meet the challenges of a changing world.

Ladies and Gentlemen of the West Point Class of 1989: today you enjoy the trust and confidence of the American people. Guard jealously that trust and confidence, because they enable you to carry out your task—the defense of our Nation and of the cause of peace and freedom.

Our peace and freedom have not been easily won; they have been gained at a heavy price. You who serve in defense of our Nation will come to understand the price of maintaining that peace and freedom. Your livetime of service, sacrifice, and selflessness will be for the benefit of millions of Americans across this great Nation, and for generations yet to come. For Americans of today, and Americans of the future, I thank you for joining the ranks of our armed services, and I wish you all the best.

God Bless you all.●

KELLY KAMMERER

● Mr. LEAHY. Mr. President, I ask that my remarks delivered on March 16, 1989, with regard to Kelly Kammerer, then Director of the Office of Legislative Affairs of AID, be printed in the RECORD.

The remarks follow:

Good morning. We had our first hearing yesterday where we heard from Secretary Baker and discussed in broad terms the Administration's Fiscal Year 1990 Foreign Assistance budget request.

We will continue that quest today with Alan Woods, Administrator of the Agency for International Development. I note the priority before us. We are going to have several hearings, but the first two involve you and the Secretary of State. There are a number of reasons for that. Primarily, I think you both have an extraordinary part to play.

I appreciate the way you and your office have dealt with us in an open, candid, and frank manner. One of the principal reasons we enjoy this good relationship is because of the work of Kelly Kammerer, who has been the Director of the Office of Legislative Affairs at AID since 1983.

Kelly will be leaving soon to become AID's mission director in Nepal. On behalf of the members and staff of this subcommittee, I want to pay my respects to him for the great job he has done. I don't want to embarrass him too much but we have relied heavily on him and his staff for years. He has always been an absolute professional, and the good relationship this committee has had with AID is because of Kelly. I am going to miss him an awful lot. I think the only criticism I have is that he is leaving just as I become Chairman.

There is another personal mention also. The dearest friends my wife and I have in Vermont, the Murthas have three absolutely lovely children. Marcelle and I are Godparents of their youngest child, and Kelly is the Godfather of their oldest daughter, Elizabeth. So we have a kind of personal relationship. They are coming down to visit soon, but unfortunately, Kelly will have left for Nepal.

Thank you again, Kelly, for the fine job you have done. We will miss you.●

SOUTH AFRICAN SANCTIONS

● Mr. BOSCHWITZ. Mr. President, I rise to express my pleasure in joining with Senator SIMON as the lead Republican in submitting Senate Concurrent Resolution 47, expressing the sense of Congress that the administration should seek to gain from our allies the imposition of the same economic sanctions against South Africa that we ourselves have imposed.

Mr. President, the abhorrent system of apartheid continues in South Africa, denying the overwhelming black majority population of that country the basic human rights of liberty and democracy that we enjoy and, indeed, take for granted. Apartheid is an abomination that must end and must yield to a nonracial democracy. Although the primary focus of that struggle is naturally within South Africa itself, we in the West can play an important supporting role.

I supported the economic sanctions Congress imposed on South Africa in 1986 and voted to override a Presidential veto. But if those sanctions are to have their fullest impact, the major industrial democracies must join in united action. Over 80 percent of South Africa's trade occurs with the industrial democracies. It does little good if, after we have imposed sanctions, our allies simply go in and pick up the pieces. In that case, the only group we have hurt are American firms that have been stopped from doing business in South Africa.

By gaining the agreement of our allies to impose the same sanctions we currently employ, we can significantly increase economic pressure on South Africa to change. I strongly believe that this is something worthy to pursue, reflecting the values that we Americans hold dear. It will also be a demonstration of American commitment and leadership in the drive to end the evil that is apartheid. I commend my colleague from Illinois, Senator SIMON, for his efforts and for the real leadership he has shown on this important issue.●

ADMINISTRATION VIEWS OF S. 377, THE REGIONAL PRESIDENTIAL PRIMARIES AND CAUCUSES ACT

● Mr. HUMPHREY. Mr. President, I take this opportunity to share with Senators a copy of a letter from Assistant Attorney General Carol T. Crawford to the majority leader regarding S. 377, legislation which would establish a system of regional Presidential primaries.

All Senators should note the letter states that both the Justice Department and the Office of Management and Budget will recommend a veto of S. 377. Now pending on the Senate Calendar, this legislation would replace the present Presidential nomination system with a series of regional

primaries, with the order determined by lottery.

There are many reasons why the administration should veto this bill, not the least of which, as Ms. Crawford points out, it is unconstitutional.

In addition, it virtually locks in frontrunners, at the expense of challengers. And, it turns 1-on-1 campaigning into a media circus in which candidates are never required to interact with the voters.

It may also be that Senate Republicans will be concerned about turning over their nomination process to the management—and ultimately micromanagement—of a democratically controlled Congress.

For all of these reasons and more, this is a piece of legislation which, if considered, will provoke extended debate. But, for the time being, I would simply ask that the full text of this letter be reprinted in the RECORD:

The letter follows:

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 7, 1989.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: This letter presents the views of the Department of Justice on S. 377, the Regional Presidential Primaries and Caucuses Act of 1989. The Department opposes this bill because Congress does not have the constitutional authority to prescribe the time at which the states must conduct a presidential primary.

S. 377 establishes eight regional presidential primaries to be held every two weeks beginning in March during a presidential election year. The bill places each state and territory in one of eight geographic regions and provides that each state must hold its presidential primary or other means of expressing a preference for presidential candidates on the date chosen by lot for that region. The bill then prohibits any state from holding a presidential primary or other means of expressing a preference for a presidential candidate on any other date.

In our constitutional scheme, the process of selecting presidential electors is essentially a State concern. The Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . ." U.S. Const. art. II, §1, cl. 2.

Congressional power over presidential elections is described in Article II, section 1, clause 4 of the Constitution: "The Congress may determine the Time of Chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."[1] By contrast, Congress has broader power to regulate elections for Senators and members of the House of Representatives: "The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators," U.S. Const., Art. I, §4, cl. 1. Thus, while Congress has general power to regulate the time, place and manner of congressional elections, with respect to presidential elections its power is limited to determining the time of choosing the electors. Accordingly, the Constitution simply does not provide Congress with the power to determine the time of choosing delegates who will select a candidate who will be voted upon by the presidential electors.

We acknowledge that the Supreme Court has recognized that Congress has limited power to regulate presidential elections to the extent necessary to prevent fraud and preserve the integrity of the electoral process. *See Burroughs v. United States,* 290 U.S. 534 (1934) (upholding a federal law imposing record keeping requirements on political committees that accept contributions or make expenditures for the purpose of influencing the election of presidential or vice-presidential electors); *see also Buckley v. Valeo,* 424 U.S. 1, 13 (1976) (unholding a federal law regulating campaign contributions against a First Amendment challenge and observing in dicta that the constitutional power of Congress to regulate federal elections is "unquestioned"). However, while Congress has authority to preserve the integrity of the presidential election process, it cannot encroach upon the authority of the states to determine the manner in which the process and sequence of selecting a President is structured.

Congress also has power under several constitutional amendments to enforce prohibitions against specific discriminatory practices. *See* U.S. Const. amend. XV (race, color, or previous condition of servitude); amend. XIX (sex); amend. XXIV (poll taxes); amend. XXVI (age). In *Oregon v. Mitchell,* 400 U.S. 112 (1970), before the enactment of the Twenty-Sixth Amendment, the Supreme Court upheld a provision of the Voting Rights Act Amendments of 1970 which lowered the minimum age of voters in federal elections from twenty-one to eighteen. Four justices relied on Congress' power under section 5 of the Fourteenth Amendment to prohibit discrimination on the basis of age. *Id.* at 135-44 (Douglas J.); 239-81 (Brennan, White, & Marshall, JJ.).[2]

S. 377, however, is not designed to eliminate constitutionally prohibited discriminatory practices. Rather, it rests upon a concern that presidential primaries "are conducted without any semblance of order," section 2(1), and that federally regulated regional primaries are necessary to remedy such disorder and thus "to preserve the effectiveness of the Presidential election process and to provide for the public welfare of the Nation." Section 2(3). These purposes do not place the bill within the scope of Congress' constitutional authority over the conduct of presidential elections. To the contrary, S. 377 invades an area of state power to regulate the manner of presidential elections. A federal law requiring states to hold their primaries on a specified day strips the states of their fundamental power to determine the manner in which their presidential primaries will contribute to the presidential nominating process. Because the bill is not supported by Congress' constitutional power to assure the integrity of the electoral process or to eliminate discrimination, it is unconstitutional.

Of course, nothing in the Constitution prohibits a group of states in a region from deciding to hold their primaries on the same day, as occurred in 1988 with the so-called "Super Tuesday" primaries in the South. The "Super Tuesday" states, however, acted voluntarily. Other states prefer different arrangements. For instance, New Hampshire requires that its primary precede any other state's primary. *See* N.H. Rev. Stat. Ann. 653.9. S. 377 would deny the states the right to make this choice—an opportunity that is the very essence of federalism and creates the necessary opportunity for political experimentation.

For these reasons, the Department of Justice opposes S. 377 and will recommend that the President veto the legislation should it be presented to him.

The Office of Management and Budget has advised that the enactment of S. 377 is not in accord with the program of the President.

Sincerely,

CAROL T. CRAWFORD,
Assistant Attorney General.●

[1] The Electors referred to are of course the Electors who comprise the Electoral College and whose votes directly elect the President.

[2] The fifth justice in the majority in *Oregon v. Mitchell* believed that Congress has broad authority to set qualifications for voters for electors for President and Vice President, 400 U.S. at 119-24 (Black, J.), but four other justices denied that Congress has such power, *id.* at 209-12 (Harlan, J.) & 287-92 (Stewart, J., with Burger, C.J. & Blackmun, J.), while three justices expressly refused to consider Congress' authority to set qualifications for voting in federal elections. *Id.* at 237 (Brennan, White, & Marshall, JJ.).

SECTION-BY-SECTION ANALYSIS OF S. 774: THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

● Mr. RIEGLE. Mr. President, I ask to have printed in the RECORD—for myself and Senator GARN—a section-by-section analysis of S. 774, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which was passed by the Senate on April 19, 1989.

The analysis follows:

S. 774: FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 AS PASSED BY THE SENATE ON APRIL 19, 1989

Section-by-section analysis

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

This section designates the bill as the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," and provides a table of contents.

TITLE I—PURPOSES

SECTION 101. PURPOSES

This section sets forth some of the primary purposes of the bill, namely:

(1) to promote, through regulatory reform, a safe and stable system of affordable housing finance;

(2) to improve the supervision of federally insured depository institutions by strengthening the enforcement powers of Federal regulators;

(3) to curtail needless risks to the Federal deposit insurance funds by strengthening capital, accounting, and other regulatory standards;

(4) to promote the independence of the Federal Deposit Insurance Corporation through an independent board of directors, adequate funding, and appropriate powers;

(5) to put the Federal deposit insurance funds on a sound financial footing for the future;

(6) to establish an Office of Savings Associations in the Department of Treasury, under the general oversight of the Secretary of the Treasury;

(7) to create a new corporation, to be known as the Resolution Trust Corporation, to deal with failed thrift institutions;

(8) to provide funds from public and private sources to deal expeditiously with failed financial institutions; and

(9) to strengthen the penalties for crimes and other misconduct involving federally insured depository institutions.

TITLE II—FEDERAL DEPOSIT INSURANCE CORPORATION

SECTION 201. FINANCIAL INSTITUTIONS

This section generally amends the Federal Deposit Insurance Act ("FDI Act") by replacing "insured bank" with "insured financial institution." "Financial institution" encompasses both banks and savings associations. Savings associations (defined in section 204) include Federal savings associations, Federal savings banks, State savings and loan associations, and certain similar institutions.

SECTION 202. DUTIES OF THE FDIC

Under current law, the Federal Deposit Insurance Corporation ("FDIC") insures deposits in qualified banks. Under this section, the FDIC would also insure deposits in qualified savings associations.

SECTION 203. FDIC BOARD MEMBERS

The FDIC is currently administered by a three-member board of directors ("FDIC Board"), consisting of the Comptroller of the Currency and two appointed members. The appointed members are appointed by the President for six-year terms, subject to confirmation by the Senate. No more than two members may be of the same political party. The Chairman is selected by the Board itself from among the appointed members. If the chairmanship becomes vacant, the Comptroller acts as Chairman until the Board selects a new Chairman.

A. Structure of the Board

This section expands the FDIC Board from three members to five. The Comptroller of the Currency and the Chairman of the Office of Savings Associations ("COSA") will automatically be members. The remaining three members will be appointed by the President for six-year terms, subject to confirmation by the Senate. Of the three appointed members, one will be appointed (subject to confirmation by the Senate) as the Chairman of the FDIC. No more than two of the three appointed members may be of the same political party.

If the Chairman of the FDIC leaves office or becomes disabled, the Board may (pending the appointment of a successor) select an Acting Chairman from among the appointed members.

B. Transition Provision

The current members of the FDIC Board may continue to serve until their terms expire. The current Chairman of the FDIC Board may continue to serve until his term as a member expires.

SECTION 204. DEFINITIONS

A. Receiver

A "receiver" is currently defined as a person appointed to wind up the affairs of a bank. This section broadens the terms to include a person appointed to wind up the affairs of a savings association, or to conserve the assets of a bank or savings association.

B. Deposit

The definition of a "deposit" is amended to include deposits in a savings association.

Accounts in a savings association heretofore insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") will automatically be insured by the FDIC up to the limit of FSLIC coverage, as determined by FSLIC regulations and interpretations in effect when the bill becomes law.

Although the FDIC and FSLIC have parallel statutes governing what kinds of deposits are insured and to what extent, the two agencies have developed slightly different standards on the subject (i.e., different regulations, principles, and interpretations regarding the scope of deposit insurance coverage). Under this section, accounts previously insured by FSLIC will for a limited time continue to be governed by FSLIC's standards, but will become subject to the FDIC's standards after the later of: (1) six months after the bill becomes law; (2) if the deposit has one or more maturity dates, after the first maturity date to occur after that six-month period; or (3) if prior notice to make a withdrawal is required, after the required notice period expires.

The FDIC should, to the fullest extent possible (consistent with safety and soundness) notify depositors that the transfer of deposit insurance from FSLIC to the FDIC may affect the extent of their coverage, so that no depositor unwittingly loses coverage because of this section.

C. Appropriate Federal Banking Agency

The FDI refers to the primary Federal regulator for a given type of institution (e.g., the Comptroller of the Currency for national banks) as the "appropriate Federal banking agency." This section specifies that the Chairman of the Office of Savings Associations, rather than the Federal Home Loan Bank Board ("Bank Board"), is the appropriate Federal banking agency for savings associations and savings and loan holding companies.

D. Savings Association

A "savings association" is defined as: (1) an institution whose accounts were insured by FSLIC when the bill became law (and that has not subsequently become a bank); (2) a Federal savings and loan association or Federal savings bank; (3) a State savings and loan association, building and loan association, or homestead association; and (4) any other corporation the FDIC determines to be operating in substantially the same manner as a savings and loan association.

E. Bank

The FDI Act's current definition of a "bank" is amended to specifically include cooperative banks that are FDIC-insured when the bill become law. The revised definition also specifies that a "bank" includes a former savings association that has become a bank, even if the institution is a member of the Savings Association Insurance Fund.

F. Default

Definitions of "default" and "in danger of default" are added to the FDI Act.

A financial institution is in "default" if a court of competent jurisdication, the appropriate Federal banking agency, or other public authority has made an offical determination under which a conservator or receiver or other legal custodian has been or will be appointed.

An institution is "in danger of default" if the appropriate Federal banking agency or the State chartering authority finds that: (1) the institution is not likely to be able to meet its depositors' demands or pay its obligations in the normal course of business, and there is no reasonable prospect that the institution will be able to meet those demands or pay those obligations without Federal assistance; or (2) the institution has incurred or is likely to incur losses that will deplete substantially all of its capital, and there is no reasonable prospect for the institution's capital to be replenished without Federal assistance.

G. Institution-related party

The bill introduces a new term, "institution-related party," to replace current references to directors, officers, employees, and other persons participating in the affairs of an insured bank or savings association, as used throughout the enforcement provisions of the Federal Deposit Insurance Act. The new term is more concise, and it is defined so as to expand the Federal banking agencies; enforcement authority to include all persons that may have an influence over the operations of an insured financial institution.

An "institution-related party" is defined to include any director, officer, employee, agent, controlling shareholder (other than a holding company), or other person participating in the conduct of the affairs of an insured financial institution or a subsidiary of an insured financial institution, and any person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency.

An institution-related party also includes an "independent contractor" such as an attorney, accountant, or appraiser, who knowingly or recklessly participates in a wrongful action that had or is likely to have an adverse effect on an insured financial institution. The additional requirement of knowing or reckless participation in a wrongful act applies only to an independent contractor who does not otherwise participate in the financial institution's affairs. Thus, for example, an attorney who is a director of a bank would automatically be an "institution-related party," even if he or she did not knowingly or recklessly participate in a wrongful act.

H. Subsidiary

A "subsidiary" is defined as any company directly or indirectly owned or controlled by another company. It includes a service corporation owned in whole or in part by an insured financial institution, and any direct or indirect subsidiary of the service corporation. Thus, if 20 savings associations each owned a 5 percent interest in a single service corporation, that corporation would be a subsidiary of each of the 20 parent savings associations. In addition, any subsidiary of such a service corporation would also be a subsidiary of each of the 20 parent savings associations.

SECTION 205. INSURED SAVINGS ASSOCIATIONS

This section provides that every savings association whose accounts are insured by FSLIC when the bill becomes law will automatically be insured by the FDIC.

This section also changes current procedures for granting FDIC insurance to national banks and State banks that are members of the Federal Reserve System ("State member banks"). Under the FDI Act, a national bank automatically receives FDIC insurance when the Comptroller of the Currency permits it to commence business as a national bank, and a State bank automati-

cally receives FDIC insurance when the Federal Reserve Board admits it to membership in the Federal Reserve System. In each such case, the Comptroller or the Board issues a certificate to the FDIC stating that it has considered the statutory criteria that the FDIC must consider when granting or denying insurance coverage, namely: (1) the bank's financial history and condition; (2) the adequacy of the bank's capital structure; (3) the bank's future earnings prospects; (4) the general character of the bank's management; (5) the convenience and needs of the community to be served; and (6) whether the bank's corporate powers are consistent with the purposes of the FDI Act. (These criteria, which are part of current law, are retained and strengthened by section 207 of the bill.)

Under this section, a national bank or State member bank cannot commence business as such until the FDIC has received notice of the application and had a reasonable time in which to comment. The Comptroller or the Federal Reserve Board must consider the FDIC's comments when making its final determination on whether the bank satisfies the statutory criteria for insurance.

SECTION 206. APPLICATIONS FOR DEPOSIT INSURANCE

A. State savings associations

A State nonmember bank must apply directly to the FDIC for deposit insurance. The FDIC considers the six statutory criteria noted above, and also examines the institution to ensure that it has sufficient assets, in excess of minimum required capital, to meet all of its liabilities.

This section extends the same requirements to State savings associations: such an institution must apply directly to the FDIC for deposit insurance, and the FDIC will then evaluate the application under the same criteria as apply to a State nonmember bank.

B. Federal savings associations

A new Federal savings association, having received its charter from the Chairman of the Office of Savings Associations, must apply to the FDIC and provide a certificate from COSA stating that COSA has considered the statutory criteria for granting deposit insurance. The FDIC is to review the application and the certificate, and may also conduct its own examination of the institution. The savings association will then receive FDIC insurance unless the FDIC Board determines, by a vote of at least three-fourths of its sitting members, that insurance should be denied.

In determining whether to grant or deny insurance, the FDIC Board is to give due deference to COSA's determination, but it is to independently consider: (1) the institution's financial history and condition; (2) the adequacy of the institution's capital structure; (3) the institution's future earnings prospects; (4) the general character and fitness of the institution's management; and (5) the risk that the institution presents to the pertinent insurance fund. The FDIC Board is not to consider the convenience and needs of the community to be served or whether the institution's corporate powers are consistent with the purposes of the FDI Act. (The institution's corporate powers would, of course, be set by Federal law.) If the FDIC Board votes to deny insurance, it must promptly notify COSA, giving specific reasons for the denial.

C. Interim associations; conversions and mergers

Three types of new Federal savings associations are exempt from the above procedures: (1) interim institutions that will not open for business; (2) institutions resulting from the conversion of an insured State institution; and (3) institutions resulting from the merger of existing insured institutions. Any such institution will automatically be insured upon receiving its charter from COSA.

D. New criteria for granting insurance

The criteria for granting deposit insurance to a branch of a foreign bank are expanded to include the risk presented to the pertinent deposit insurance fund as well as the "fitness" of management. As noted above, current law already requires the FDIC to consider the "general character" of management. Section 207 makes an identical change in the criteria to be considered before granting insurance to banks and savings associations.

E. Entrance fee

FSLIC may currently charge State thrift institutions an entrance fee based on the administrative costs to FSLIC of examining those institutions. This section imposes an entrance fee on any uninsured financial institution or uninsured branch of a foreign bank that seeks insurance from either of the FDIC's deposit insurance funds: the Bank Insurance Fund ("BIF") or the Savings Association Insurance Fund ("SAIF"). The fee is to be credited to the appropriate insurance fund. The FDIC is to set the amount of the fee by regulation, with due consideration for the need to establish and maintain adequate reserve ratios in each fund as required by section 208 of the bill. A savings institution previously insured by FSLIC automatically becomes SAIF-insured under the bill and need not pay an entrance fee.

F. Conversions from one fund to the other

A financial institution engages in a "conversion transaction" if it moves from the Savings Association Insurance Fund to the Bank Insurance Fund, or vice versa. Such a transaction also includes a merger or consolidation of a SAIF member with a BIF member, or a transfer of deposit liabilities from a member of one insurance fund to a member of the other fund.

The bill prohibits any insured financial institution from participating in a conversion transaction without the FDIC's prior consent. For five years after the bill becomes law, the FDIC may not consent to any conversion, with the following exceptions:

1. Insubstantial portion of liabilities.—The FDIC may at any time permit a conversion transaction that affects only an "insubstantial" portion of an institution's insured liabilities. A transaction meets the test if the insured liabilities transferred during the five-year period do not exceed 20 percent of the total insured liabilities held by the institution when the bill becomes law.

2. Acquisition of a troubled institution.—The FDIC may at any time permit a conversion transaction in connection with the acquisition of a financial institution that is in default or in danger of default. However, to approve a conversion under this exception, the FDIC must determine that the estimated financial benefits to the insurance fund the institution is leaving equal or exceed the estimated loss of assessment income to that insurance fund during the five years following the conversion. If the conversion transaction results in a loss of assessment income to SAIF, the Resolution Trust Corporation must concur in the FDIC's determination regarding the relative costs and benefits involved.

3. Transactions to meet capital requirements.—The FDIC may at any time permit a conversion transaction that assists the institution involved in meeting a capital standard that the institution and its Federal supervisory agency agreed to before August 10, 1987, if the institution has made a binding, written commitment to use any gain from the conversion to increase its capital.

4. Institution that never accepted deposits.—The FDIC may at any time permit a conversion transaction involving a particular State savings association that has never accepted deposits and was not FSLIC-insured when the bill became law.

G. Conversion fees

Every institution participating in a conversion transaction in which the resulting or acquiring institution is a BIF member must pay an exit fee to SAIF (or to the Financing Corporation, if the Financing Corporation has exhausted all other means of paying interest on its obligations). The fee is to be set by the FDIC with the approval of the Secretary of the Treasury, and collected from the converting institution or other institution involved, as specified by the Secretary.

The FDIC may impose an entrance fee on institutions converting from SAIF to BIF or vice versa. In either case, the entrance fee must be the amount necessary to prevent dilution of the fund into which the institution is transferring, and must be paid to that fund.

H. Liability of Commonly Controlled Financial Institutions

1. Liability to the FDIC.—Whenever the FDIC incurs a loss in connection either with a default or with providing assistance to a financial institution in danger of default, any commonly controlled insured financial institution is liable to the FDIC—and may be required to reimburse the FDIC—for the loss. No such liability exists unless the FDIC notifies each such institution of the liability within two years after incurring the loss.

Financial institutions are "commonly controlled" if they are subsidiaries of the same financial institution holding company, or if one financial institution controls the other financial institution.

2. Procedure; amount of compensation.—When an insured financial institution is in default, or needs financial assistance because it is in danger of default, the FDIC is to make a good-faith estimate of its anticipated loss. The FDIC must then notify all other commonly controlled financial institutions of the amount of the estimated loss, and each institution's share. After consulting with the appropriate Federal banking agency for each such institution, the FDIC is to specify the procedures and schedule by which those institutions are to reimburse the FDIC for the anticipated loss. The FDIC may compel immediate payment of those amounts. If the amount paid is more than the FDIC's actual loss, the FDIC is to refund the excess to each institution from which payments were received. If the amount paid is less than the actual loss, the FDIC may require each commonly controlled institution to make an additional payment.

3. Priority.— A commonly controlled institution's liability to the FDIC takes priority over any other obligation that is subordinat-

ed to depositors and general creditors, any obligation owed to shareholders because they are shareholders, and any unsecured obligation or liability owed to any other commonly controlled company or financial institution. The FDIC's claim is subordinate to deposit liabilities (other than deposits of commonly controlled financial institutions), secured obligations, and other general liabilities. The FDIC's claim is equal in preference to all other obligations and liabilities of the financial institution.

4. Review.—The FDIC is to establish an administrative procedure for reviewing its own determinations regarding the amount of loss, the liability of commonly controlled institutions, and the scheduling of payments. Commonly controlled institutions subject to liability are entitled to a full evidentiary hearing on the record pursuant to the Administrative Procedure Act.

The FDIC's determinations regarding loss, liability, and the procedures or scheduling of payments may be reviewed in the court of appeals. The scope of review shall be in accordance with section 706 of title 5. Thus the reviewing court shall set aside the FDIC's findings or conclusions if they are not supported by substantial evidence.

5. Limitations on private rights.—This section precludes any court from giving effect to any right conferred on any person, if giving effect to the right would impair a financial institution's ability to reimburse the FDIC under this section.

6. Exceptions.—In setting forth the liability of commonly controlled financial institutions, this section makes four limited exceptions.

a. Limited partnerships.—The first exception relates to certain limited partnerships that, on or before April 10, 1989, filed registration statements with the SEC indicating that the partnerships intended to acquire one or more insured financial institutions. This section does not apply to such a limited partnership or its affiliates, other than to a financial institution that is a majority-owned subsidiary of the partnership.

b. SAIF and BIF members.—For the first five years after the bill becomes law, no BIF member will be liable for losses arising out of the default of or assistance provided to a SAIF member, and vice versa.

c. Certain institutions that made acquisitions in economically distressed States.—The third exception relates to certain acquisitions by out-of-State acquirers in economically distressed States, consummated on May 1, 1987, or January 29, 1989, in which the institutions acquired in each case had aggregate total assets exceeding $4 billion. Unless extended by the FDIC, the exception expires five years after the acquisition.

d. Common control resulting from debts previously contracted.—Under the fourth exception, institutions are not commonly controlled if they are affiliated solely because voting shares are acquired in securing or collecting a debt previously contracted in good faith. The exception expires five years after the date of acquisition. During the five-year period, all transactions between the acquired institution and affiliated financial institutions must fully comply with sections 23A and 23B of the Federal Reserve Act, without using the exemption in section 23A(d)(1) for transactions between affiliated institutions.

SECTION 207. ELIGIBILITY FOR DEPOSIT INSURANCE

Under current law, the FDIC and the other Federal banking agencies are required to consider six criteria when determining whether an institution qualifies for FDIC insurance: (1) the financial history and condition of the institution; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the general character of its management; (5) the convenience and needs of the community to be served; and (6) whether its corporate powers are consistent with the purposes of the FDI Act.

This section makes the criteria more stringent by requiring the agencies to consider (1) the "fitness" as well as the general character of management, and (2) the "risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate."

SECTION 208. ASSESSMENTS

Section 208 amends section 7 of the Federal Deposit Insurance Act.

A. Reports

This section strengthens the FDIC's authority to obtain reports from insured financial institutions. It gives the FDIC access to all reports made by such institutions to other Federal banking agencies; permits the FDIC to provide the other Federal banking agencies with reports it receives; and authorizes the FDIC, with the consent of the other Federal banking agencies, to require insured finanical institutions to file additional reports for insurance purposes. This section retains the current requirement that insured banks file quarterly reports of their financial condition with the appropriate Federal banking agency, and extends that requirement to insured savings associations.

B. Assessment rates

This section establishes procedures governing the assessment of deposit insurance premiums, and sets the annual insurance assessment rates and target reserve ratios for BIF and SAIF members. Assessment rates are to be independently established for BIF and SAIF members.

The section specifies a target reserve ratio for each fund. The reserve ratio is the net worth of the fund divided by the aggregate amount of insured deposits held by the fund's members. The minimum reserve ratio for both BIF and SAIF is 1.25 percent of insured accounts, but the FDIC Board may apply a higher ratio to members of either fund it if determines that the higher ratio is justified by a significant risk of substantial future losses to that fund. The higher ratio cannot exceed 1.65 percent of insured deposits, and must be set annually, by a vote of the FDIC Board.

Any assets of either fund exceeding 1.25 percent of insured deposits constitute a "supplemental reserve," whose earnings will accrue to an earnings participation account for quarterly distribution to the fund's members. The supplemental reserve must itself be distributed to the fund's members if it is no longer needed to satisfy the reserve ratio.

This section establishes the amounts members must pay for deposit insurance. Those amounts are expressed as a percentage of the member's assessment base as determined under current law. BIF members must pay the current insurance assessment rate (1/12 of 1 percent) until the end of 1989. For 1990, the rate will be 12/100 of 1 percent. After 1990, the rate will be 15/100 of 1 percent.

Before 1995, the FDIC Board may raise the annual assessment rate for BIF members only if BIF's reserve ratio remains at or below the previous year's ratio. During and after 1995, the Board may raise the annual assessment rate for BIF members if it expects BIF's reserve ratio to be below the designated reserve ratio for that year. The increase in any year cannot exceed 5/100 of one percentage point, and the maximum annual assessment rate that may be set under this procedure is 30/100 of 1 percent. Each BIF member must contribute at least $1,000 per year.

Similarly, SAIF members must pay their current rate (20.8/100 of 1 percent) until December 31, 1990. From January 1, 1991, through December 31, 1993, they will pay 23/100 of one percent. From January 1, 1994, through December 31, 1997, they will pay 18/100 of 1 percent. After 1997, they will pay 15/100 of one percent.

After 1994, and until SAIF's reserve ratio reaches 1.20 percent, the FDIC may increase the SAIF assessment rate if: (1) SAIF has had a net loss in any of the three preceding years; or (2) the FDIC Board determines that extraordinary circumstances pose a reasonable risk of serious future losses to SAIF.

Once SAIF's reserve ratio reaches 1.20 percent, the FDIC may increase the SAIF assessment rate if the FDIC Board expects the reserve ratio to be below the designated reserve ratio for the year.

The SAIF rate cannot exceed 30/100 of 1 percent nor can the FDIC raise the rate by more than 5/100 of one percentage point per year. Each SAIF member must contribute at least $1,000 per year.

This section makes it clear that premiums paid to the Financing Corporation and the Resolution Funding Corporation will count (dollar for dollar) against the limits on SAIF assessments. This ensures that institutions are not double- or triple-assessed.

The FDIC's assessment producers apply to both BIF and SAIF members. The semiannual assessment due from each member is equal to one-half the annual assessment rate times the member's average assessment base for the immediately preceding semiannual period.

C. Credits

When the FDIC Board expects a fund's reserve ratio to exceed the designated reserve ratio, the FDIC will rebate to the fund's members the lesser of (1) the amount necessary to reduce the fund's reserve ratio to the designated reserve ratio, or (2) 100 percent of the fund's net assessment income in the succeeding year. For each Fund, net assessment income is defined as total assessments and investment income minus (a) net operating costs and expenses and (b) net additions to loss reserves and actual losses sustained. These credit payment procedures apply to each fund separately.

D. Change in control

This section amends the Change in Bank Control Act by requiring the appropriate Federal banking agency to consider the effect of a proposed acquisition on the pertinent deposit insurance fund and by applying the Act to savings and loan holding companies and any other companies that control financial institutions.

SECTION 209. CORPORATE POWERS OF THE FDIC

This section makes technical and conforming amendments to section 9 of the FDI Act, which generally sets forth the basic corporate powers of the FDIC. This section provides that when the FDIC has been appointed receiver under State law for a State savings association, claims by or against the savings association which arose before the FDIC was appointed shall not be

deemed to arise under Federal law. This preserves potential State court jurisdiction over such claims.

SECTION 210. ADMINISTRATION OF THE FSLIC

Section 210 authorizes the FDIC to examine any State savings association that applies for insurance, and to conduct "special examinations" of any insured savings association. The FDIC currently has similar authority to make special examinations of national and State member banks.

SECTION 211. INSURANCE FUNDS

A. Establishment and funding of separate funds

This section amends section 11 of the FDI Act to provide for two separate deposit insurance funds, which are not to be commingled. The Bank Insurance Fund is a continuation of the FDIC's existing fund. All assets, debts, obligations, contracts, and other liabilities of the existing FDIC fund are to be transferred to BIF. All assessments paid by BIF members are to be paid into BIF, and BIF's assets are to be used in connection with BIF members.

The other fund is the Savings Association Insurance Fund. All assessments paid by SAIF members are paid into SAIF, except to the extent that those assessments are committed to the Financing Corporation, the Funding Corporation, or the FSLIC Resolution Fund. SAIF's assets are to be used in connection with SAIF members. In addition, beginning in fiscal year 1991, to the extent that assessments paid into SAIF may fall short of the following amounts, the Treasury is to make up the difference (subject to available appropriations):

Fiscal year:	*Billions*
1991	$2.0
1992	3.4
1993	4.6
1994	3.0
1995	4.0
1996	4.0
1997	4.0
1998	4.0
1999	3.0

The Treasury will also contribute (subject to available appropriations) any additional funds needed by SAIF to maintain a certain minimum net worth. The minimum net worth for each of the years 1991 through 1999 is as follows:

Fiscal year:	*Billions*
1991	$0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8

The Treasury will provide any funds needed for SAIF to maintain the requisite net worth until the earlier of 1999, or the first fiscal year in which SAIF's reserve ratio is at least 1.25 percent. The Treasury's potential obligation is, however, indirectly limited by a provision that SAIF's cumulative additions to obligations for fiscal years 1991 through 1999 may not exceed $24 billion.

FSLIC currently has authority to borrow from the Federal home loan banks. This section authorizes the FDIC to borrow from the FHL Banks (with the concurrence of the Federal Home Loan Bank Agency) such funds as the FDIC deems necessary for use by SAIF, so long as SAIF's total obligations do not exceed 85 percent of its assets (as provided in section 220 of the bill).

B. Managing the insurance funds and the assets of failed institutions

Although BIF and SAIF must be kept separate, the FDIC may carry out its functions with respect to both insured banks and insured savings associations using common facilities, personnel, and other administrative resources, and may manage and liquidate assets of failed banks and savings associations on a combined, efficient basis. The FDIC must maintain adequate records of costs and expenses, and must properly allocate those costs and expenses between BIF and SAIF.

SECTION 212. FDIC RECEIVERSHIP POWERS

Section 212, together with sections 213 and 214, amend section 11 of the FDI Act to redefine FDIC's rights and powers as a receiver for insured financial institutions; to authorize the FDIC to act as a conservator for such institutions; and to integrate into a common code rights and powers that the FDIC and FSLIC have exercised separately over insured banks or insured savings associations.

A. General rights and powers

Paragraph (1) of new section 11(c) authorizes the FDIC to act as receiver or conservator for any insured financial institution for which a legal custodian is appointed, and gives the FDIC the powers and duties specified in the FDI Act. Paragraph (1) also authorizes the FDIC to act as receiver or conservator for insured savings associations for which FSLIC acted as a receiver or conservator before January 1, 1989. Other provisions of the bill require the Resolution Trust Corporation to act as receiver or conservator for savings associations placed in receivership or conservatorship since January 1, 1989.

Paragraph (2) sets forth the various powers that the FDIC can exercise as conservator or receiver. These include operating an insured financial institution as a going concern, liquidating the institution, merging the institution with another institution, or transferring the institution's assets or liabilities to another institution. Many of these powers derive from FSLIC's powers under section 406(b) of the National Housing Act.

B. Specific rights and powers

Paragraph (3) requires the FDIC to pay the financial institution's credit obligations in accordance with the FDI Act.

Paragraph (4) together with new section 11(1) (added by section 214 of the bill), establishes procedures for notifying creditors that they must present their claims by a given date, and authorizes the FDIC as receiver to pay claims proved to its satisfaction. Procedures for determining the validity of claims are discussed in connection with section 214.

Paragraph (5) authorizes the FDIC as receiver to pay the FDIC as insurer the amount properly due on claims of insured depositors to which the FDIC became subrogated through its insurance payments.

Paragraph (6) permits the FDIC at any time to pay dividends from the liquidation of the institution to claimants who have satisfactorily proved their claims.

Paragraph (7) enables the FDIC, as conservator or receiver, to obtain a stay for up to 45 days of any judicial proceeding to which the FDIC or the institution is or becomes a party.

Paragraph (8) codifies the FDIC's common-law right as a liquidating receiver to repudiate or disaffirm a contract or lease which the FDIC considers to be burdensome and whose repudiation will promote the orderly administration of the institution's affairs. FSLIC's receivership regulations currently include that right. 12 C.F.R. §§ 548.2(k), 549.3(a) (1988). This paragraph incorporates rights and principles established at common law or in bankruptcy. Subparagraphs (D) and (E) are closely modeled on parallel provisions of section 365 of the Bankruptcy Code. Subparagraph (C) is analogous to those provisions. Subparagraph (B) follows common-law principles in limiting to compensatory relief the damages that a party may claim on a repudiated contract.

Subparagraph (I) of paragraph (8) requires the FDIC to determine within a reasonable time whether or not it wishes to repudiate a contract or lease. Subparagraph (J) provides assurance of payment to a claimant that provides services to an institution after the FDIC is appointed as receiver.

Subparagraphs (G) and (H) of paragraph (8) limit the FDIC's right of repudiation to ensure that the right does not create risks either to those who have valid security interests in the institution's assets or to certain lenders of last resort that have extended credit to the institution.

Subparagraphs (F), (K), (L), (M), and (N) of paragraph (8) contain certain limitations or assurances that either have been recognized by FSLIC or the FDIC in prior administrative actions or are consistent with rights of claimants under bankruptcy law. These provisions, which were recommended by the FDIC, principally concern the contract liquidation rights of parties to extensions of credit, liquidity arrangements, or contracts facilitating risk management.

Paragraph (9) enables the FDIC, as receiver or conservator, to enforce contracts entered into by the financial institution, even if the contract purports to allow the other party to declare the contract in default solely because the FDIC has been appointed as custodian or because the institution is insolvent.

Paragraph (9) does not apply to director's and officer's liability insurance contracts or to financial institution bonds. The FSLIC and FDIC have frequently challenged clauses in such contracts or bonds that preclude the deposit insurer from bringing a claim under the contract or bond, contending that the clauses are unenforceable. Paragraph (9) remains neutral regarding such litigation and regarding the FDIC's ability under other provisions of State or Federal law, current or future, to pursue claims on such contracts or bonds. For example, if the law of a particular State declares limitations on the enforceability of director's or officer's liability contracts to be void as against public policy, the FDIC could pursue a claim on such a contract under that State's law.

Paragraph (10) requires that the FDIC maintain an accounting of its actions as receiver or conservator for an institution and annually provide a copy of the accounting, upon request, to the institution's shareholders, the Secretary of the Treasury, the Comptroller General, and the authority that appointed the FDIC as receiver or conservator.

Paragraph (11) requires the FDIC to distribute to an institution's shareholders or members any funds remaining after paying creditors and other claimants.

Under paragraph (12), the FDIC may, seven years after it is appointed receiver, destroy records of the institution that are no longer needed. However, the FDIC may not

destroy records that may be needed for a criminal prosecution or a civil or administrative proceeding.

Paragraph (13) authorizes the FDIC as receiver or conservator to sell certain single family or multi-family loans or collateral for such loans to State housing finance authorities.

Paragraph (14) gives the FDIC at least three years following its appointment as receiver or conservator to bring a legal action as receiver or conservator. The period may be longer than three years to the extent that more time is provided under any applicable State or Federal statute of limitations. Section 214 of the bill may provide additional time under Federal statutes of limitations.

C. Custody of Federal or D.C. institutions

Subsection (b) of this section requires that the FDIC be the receiver or liquidating conservator for an FDIC-insured Federal financial institution or an insured institution chartered under the District of Columbia Code. It also permits the FDIC to be appointed a nonliquidating conservator for such an institution. The FDIC, when acting as receiver or conservator for any Federal or D.C. financial institution, will have all powers set forth in the FDI Act as well as all powers granted under other applicable law. Unless the FDIC operates an institution in conservatorship as a going concern, the institution will be free from supervision by other agencies or departments.

D. Custody of State institutions

Subsection (c) of this section amends section 11(e) of the FDI Act to authorize the FDIC to accept appointment as receiver or conservator under State law for any insured State financial institution. In that capacity, the FDIC will have all powers granted under State law as well as those under the FDI Act. As is the case with Federal institutions, if the FDIC operates a State institution as a going concern, that institution will be subject to supervision by the appropriate Federal banking agency.

Paragraph (2) provides that during the three years after the bill becomes law, whenever COSA appoints a liquidating receiver or a liquidating conservator for a State savings association, that receiver or conservator must be the Resolution Trust Corporation (created under section 501 of the bill). In any case arising thereafter, the FDIC is to be appointed the liquidating receiver or conservator. The paragraph permits a State supervisor to appoint the RTC or the FDIC as a nonliquidating conservator for a State savings association.

Paragraph (3) empowers the FDIC to appoint itself as sole conservator or receiver for a State savings association under certain circumstances. This authority resembles that of the Bank Board under section 406(c)(2) of the National Housing Act. Section 501 of the bill gives the Resolution Trust Corporation similar authority to appoint itself conservator or receiver during the three years after the bill becomes law.

Paragraph (4) grants the FDIC as conservator or receiver the same powers over a State financial institution as section 11(d) of the FDI Act grants the FDIC over a Federal financial institution.

E. Deposit insurance payments

Subsection (d) of this section requires that insurance payments to depositor's of BIF members be made only from BIF, and that payments to depositors of SAIF members be made only from SAIF. Subsection (d) also authorizes the FDIC to determine deposit insurance claims administratively, subject to judicial review.

F. Right of subrogation

Subsection (e) provides that when the FDIC pays insurance to a depositor or arranges for another institution to assume liability for the deposit, the FDIC is automatically subrogated to the depositor's claim against the failed institution (i.e., the FDIC acquires all the depositor's rights).

G. Deposit Insurance National Bank

Subsection (f) makes technical changes in section 11(h) of the FDI Act, which sets forth the FDIC's authority to organize a new national bank to assume a failed bank's insured deposit liabilities.

SECTION 213. BRIDGE BANKS

This section revises section 11(i) of the FDI Act, which sets forth the FDIC's authority to organize bridge banks. A bridge bank is a temporary bank organized by the FDIC to purchase assets or assume liabilities of a failing bank while the FDIC attempts to arrange for a more permanent solution, such as a purchase and assumption by a healthy institution. The more significant of these changes will now be described.

Under current law, a bridge bank can be organized only after an insured bank is closed. This section permits the FDIC to organize a bridge bank to deal with an insured bank in default or in danger of default. It also specifies that more than one bridge bank may be used, and that a bridge bank may take on assets or liabilities of more than one failed or failing institution.

Under current law, a bridge bank cannot assume just part of a closed bank's deposits; it must assume all or none. This section permits the bridge bank to distinguish between insured and uninsured deposits or among uninsured deposits.

This section authorizes the FDIC to treat a bridge bank as being indefault, thus permitting the FDIC to avail itself of its conservatorship powers and other extraordinary remedies.

This section gives the FDIC greater flexibility and discretion in transferring assets and liabilities to a bridge bank, and specifies that assets and liabilities associated with a trust business may be transferred.

Under this section, a bridge bank is upon request entitled to a 45-day stay of judicial proceedings, and is also given protection against oral understandings that could erode its rights.

The FDIC may, but need not, provide a bridge bank with operating funds.

The Attorney General's antitrust review of any transaction involving the acquisition of the bridge bank may be waived if the transaction must be consummated immediately to prevent the probable failure of one of the parties.

The maximum life of a bridge bank is extended to five years from the current three.

SECTION 214. VALUATION OF CLAIMS AND REVIEW

This section adds nine new subsections to section 11 of the FDI Act, generally relating to the valuation, administrative determination, and judicial review of claims.

A. Valuation of claims

New subsection (k) sets forth the rights of creditors (other than insured depositors) of an insured financial institution in default or in danger of default when the FDIC acts other than as a nonliquidating conservator (e.g., as receiver, as liquidating conservator, or through a bridge bank). The FDIC's liability is limited to the amount the claimant would have realized from a liquidation of the institution's assets and the distribution of the net proceeds as liquidating dividends, including any proceeds actually realized for the institution's value as a going concern. Subsection (k) also clarifies that the FDIC may use its own resources to make additional payments to any claimant or category of claimants, without having to make such additional payments to other claimants. The payments may be made (1) to claimants directly, or (2) to an open insured institution to induce that institution to accept liability for claims.

Such payments must be from BIF if the institution in default is a BIF member; or from SAIF if the institution in default is a SAIF member.

B. Rulemaking: Administration determination of claims

New subsection (l) authorizes the FDIC to adopt administrative procedures for determining claims against an institution in receivership, under which a contested claim will be decided by an independent administrative law judge and that judge's decision will be subject to judicial review. This approach is intended to deal satisfactory with the statutory and constitutional issues recently analyzed by the Supreme Court in Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corporation, 109 CT. 1361 (1989).

C. Limits on judicial intervention

Like current section 5(d)(6)(C) of the Home Owners' Loan Act, new subsection (m) limits judicial interference in the FDIC's conduct of a conservatorship or receivership.

D. Liability of officers and directors

New subsection (n) enables the FDIC to pursue claims against directors or officers of insured financial institutions for gross negligence (or negligent conduct that demonstrates a greater disregard of a duty of care than gross negligence) or for intentional tortious conduct. This right supersedes State law limitations that, if applicable, would bar or impede such claims. This subsection does not prevent the FDIC from pursuing claims under State law or under other applicable Federal law, if such law permits the officers or directors of a financial institution to be sued (1) for violating a lower standard of care, such as simple negligence, or (2) on an alternative theory such as breach of contract or breach of fiduciary duty.

E. Procedures applicable to certain claims

New subsection (o) makes procedural changes affecting claims by the FDIC against insured financial institutions' directors, officers, employees, and certain other parties, if the FDIC acquired the claim pursuant to section 11 or 13 of the FDI Act. For example, subsection (o) bars certain acts, errors, or omissions of the FDIC or any other Federal banking agency from being raised as defenses to such claims, and makes it clear that the liability of a director or officer for breach of fiduciary duty cannot be discharged in bankruptcy. However, although an act, error, or omission of an appropriate Federal banking agency does not allow a defendant to avoid liability for his own conduct, it may be considered when appropriate in determining whether the defendant acted negligently or improperly. For example, if the FDIC brings a malpractice claim against a bank's attorney based on advice that proved erroneous, the attorney—in seeking to demonstrate that his

advice was not negligent—would be free to show that the appropriate agency had agreed with his opinion.

F. Other provisions

New subsection (p) gives the FDIC additional time in which to pursue certain claims against persons associated with insured financial institutions. Subsections (q), (r), and (s) expedite judicial proceedings involving claims brought by the FDIC against insured financial institutions' officers, directors, attorneys, accountants, or other agents.

SECTION 215. FSLIC RESOLUTION FUND

This section transfers all assets and liabilities of the FSLIC (other than certain guarantees which are transferred to the RTC) to a separate fund to be known as the "FSLIC Resolution Fund." Although this fund will be managed by the FDIC, it must not be commingled with any other FDIC fund. The assets transferred include FSLIC's outstanding claims as subrogee of insured depositors against savings associations in liquidation. The liabilities transferred include FSLIC's outstanding obligations under assistance agreements with acquirers of failing thrift institutions.

This section insulates the FDIC and the other funds it manages from liabilities of FSLIC that are transferred to the FSLIC Resolution Fund; specifies how money (including Treasury funds if appropriated by Congress) will be provided to satisfy the fund's liabilities; grants the FDIC broad authority to manage the fund; provides for the fund to be dissolved once its liabilities are satisfied and its assets are sold; requires the FDIC to report on the fund annually; and requires an annual audit of the fund by the Comptroller General (or at the Comptroller's discretion, by an independent certified public accountant).

SECTION 216. SECONDARY RESERVE

Section 216 preserves current law relating to FSLIC's secondary reserve. Thus, for example, an insured savings association may set off its share of the reserve against its liability for deposit insurance assessments.

SECTION 217. AMENDMENTS TO SECTION 12

This section makes technical and conforming changes in section 12 of the FDI Act.

SECTION 218. AMENDMENTS TO SECTION 13

This section amends section 13 of the FDI Act.

A. Investment of funds

This section requires BIF, SAIF, and FSLIC Resolution Fund money not otherwise employed to be invested in obligations issued or guaranteed by the U.S. Government.

B. Stay of judicial proceedings

Under this section, the FDIC is entitled upon request to a 45-day stay of any action to which the FDIC becomes a party by exercising its authority under section 11 or 13 of the FDI Act.

C. Calculating the cost of assistance

Under current law, the FDIC may not provide assistance to an institution under section 13 unless it determines that such assistance will be less costly than liquidating the institution (unless the institution's continued operation is essential to the community). This section requires the FDIC, when comparing the cost of assistance with the cost of liquidation, to include in its calculations (1) any loss of Federal tax revenue resulting from the transaction to the extent such a loss can be ascertained, and (2) all of the FDIC's obligations with respect to any assistance, including contingent liabilities.

D. Net-worth certificates

This section repeals the FDIC's current authority to purchase net-worth certificates from an institution that is not federally insured, as well as a provision that treats net-worth certificates as net worth for statutory and regulatory purposes.

E. Emergency acquisitions of troubled savings associations

This section incorporates into section 13 of the FDI Act section 408(m) of the National Housing Act (repealed by the bill), which currently authorizes any company to acquire a failed or failing FSLIC-insured institution, "[n]otwithstanding any provisions of the laws or constitution of any State" or (with a few exceptions) "any provision of Federal law." This section greatly restricts the override of Federal law and makes a single exception to the override of State law. Only two provisions of Federal law may be overridden: (1) the service-corporation investment limitation in new section 5(c)(4)(B) of the Home Owners' Loan Act, but only to the extent necessary for the troubled savings association to be a subsidiary of the acquiring savings association; and (2) the Depository Institution Management Interlocks Act. Management interlocks may continue for up to 10 years.

Section 408(m)'s specific reference to a State constitution (rather than simply to "State law") is deleted as unnecessary, for under the supremacy clause of the U.S. Constitution, a Federal statute preempts any inconsistent State laws, including State constitutions and statutes. Thus new section 13(k) can be used to override all State laws (including State constitutions), with one exception: section 13(k) does not override State laws that restrict the activities of a savings association on behalf of any other entity. The intent of the prohibition is illustrated by State insurance laws. Under section 13(k), State laws prohibiting a savings association from being affiliated with an insurance company may be overridden, but not State laws that prohibit a savings association from marketing insurance products on behalf of an insurance company.

This section requires the FDIC, when acting under section 13(k), to determine that the acquisition does not present a substantial risk to the safety or soundness of the savings association to be acquired or to the acquiring institution. Thus the FDIC cannot simply consider short-term savings over the cost of liquidation when determining that the use of section 13(k) will lessen its risk.

F. Branching restrictions on certain savings associations

This section relaxes the branching restrictions applicable under section 408(m)(5) to a thrift subsidiary of a bank or bank holding company. Such a subsidiary will be able to branch to the same extent as a savings association that has its home office in the same State as the subsidiary does and is not affiliated with a bank holding company.

G. Other provisions

This section makes technical and conforming changes in section 13 of the FDI Act. For example, it extends the FDIC's assistance authority under section 13(c) of the Act to insured savings associations but specifies that payments with respect to SAIF members must be made from SAIF or with money provided by the Resolution Trust Corporation.

If an insured financial institution is in default, this section permits the institution's trusts to be transferred without judicial or other approval.

SECTION 219. BORROWING AUTHORITY

This section increases from $3 billion to $5 billion the FDIC's authority to borrow from the Treasury, and permits the FDIC to use that borrowing authority only if the Secretary of the Treasury approves and if funds have been appropriated. Funds borrowed become a liability of whichever of the separate insurance funds benefits from the borrowing.

SECTION 220. TAX LIABILITY; LIMITATION ON BORROWING

A. Liability for State and local taxes

Section 220 clarified current law by specifying that the only kind of non-Federal tax to which the FDIC is subject, in its corporate capacity or as receiver, is a tax on real property. It further specifies that if an insured financial institution fails to pay a tax, the FDIC's only obligation as receiver or conservator for the institution will be to pay the pro-rata claim for the tax. The FDIC will not be subject to any special penalties or forfeitures that might otherwise apply, such as losing a security interest in the property.

B. Limitation on borrowing

This section requires the FDIC, before issuing any note, bond, debenture, guarantee, or similar obligation, to estimate the cost of the obligation and include that cost in the FDIC's financial statements.

Neither BIF nor SAIF may incur any obligation whose estimated cost would reduce the fund's net worth below 15 percent of assets. In calculating the fund's net worth for purposes of that restriction, obligations owed to the Treasury (up to $5 billion) are disregarded, as are notes issued with the approval of the Secretary of the Treasruy in lieu of borrowing from the Treasury.

C. Full faith and credit

This section pledges the full faith and credit of the United States for payment of principal and interest on notes, debentures, bonds, guarantees, and similar obligations of BIF and SAIF.

SECTION 221. REPORTS

This section requires the FDIC to report to Congress at the beginning of each year on its operations, activities, and finances during the previous 12 months. The report should analyze the purpose, effect, estimated cost, and actual cost of each resolution action funded by BIF, SAIF, or the FSLIC Resolution Fund. The FDIC must provide annual estimates of the future resource needs of the three funds, and should include its conclusions, findings, and recommendations for any future legislative or administrative action. The FDIC is also directed to submit to the Treasury and the OMB a quarterly forecast of its financial operations.

This section also requires the FDIC to conduct three special studies. The first study, due on or before January 1, 1991, will consider whether a system of risk-based deposit insurance premiums should be adopted. If the FDIC concludes that risk-based premiums are desirable and recommends that they be adopted, it is to provide a timetable and plan for implementation.

The second study, due six months after the bill becomes law, will examine the effect on safety and soundness in the banking system of passing through deposit insurance

to individual investors in unit investment trusts or individual participants in pension plans. The study must also show how broadening deposit insurance coverage is likely to affect the capital markets.

The third study, also due six months after enactment, must be undertaken with the Justice Department and the Treasury, and must examine the structure and availability of directors' and officers' liability insurance and financial institution bonds. The report must consider various factors that may affect the availability of such insurance or bonds and the willingness of persons to serve as officers or directors of insured financial institutions. The report must also consider the effect of potential changes in those factors.

SECTION 222. REGULATIONS GOVERNING INSURED FINANCIAL INSTITUTIONS

A. Insurance logo

This section requires insured savings associations to display a deposit insurance logo (1) stating that insured deposits are "backed by the full faith and credit of the United States Government"; (2) stating that each depositor is "federally insured to $100,000"; and (3) containing a symbol of a bald eagle (similar, for example, to that on the Great Seal of the United States).

Insured banks may display either that logo or the current FDIC logo.

B. COSA's review of mergers and conversions

This section authorizes the Chairman of the Office of Savings Associations to review mergers and similar transactions under the Bank Merger Act if the acquiring or resulting institution is a savings association. This section also gives COSA similar authority over conversions from Federal to State charters.

C. Activities of Savings Associations and Their Subsidiaries

This section adds to section 18 of the FDI Act a new subsection (m), relating to the activities of insured savings associations, whether State or Federal.

1. Subsidiaries: regulatory review and enforcement; separate capitalization.—If a savings association wishes to establish a company, acquire control of a company, or conduct any new activity through a company controlled by the savings association, subsection (m)(1) requires the savings association to:

(1) notify the FDIC and COSA of the proposed transaction or activity, and provide the information required by each agency's regulations;

(2) deduct from its regulatory capital its investment in and loans to the company if the company engages as principal in any activity not permissible for a national bank; and

(3) comply with all rules, regulations, and orders of COSA relating to the company's activities.

The capital-deduction requirement does not apply if the activity in question falls within one of the exceptions in new section 5(t)(3)(B) of the Home Owners' Loan Act (added by section 301 of the bill), such as the exemption for mortgage-banking activities.

Subsection (m)(2) grants the FDIC and COSA the same powers over a company controlled by a savings association as they respectively have over the parent savings association under subsection (m) or under section 8 of the FDI Act (relating to enforcement). Subsection (m)(2) also authorizes COSA to require divestiture of the company, to restrict the company's activities, or to take other corrective measures if COSA determines that a savings association's relationship to the company (1) poses a serious risk to the savings association's financial safety, soundness, or stability; or (2) is inconsistent with sound banking principles or the purposes of the FDI Act.

2. Activities incompatible with deposit insurance.—Subsection (m)(3) authorizes the FDIC (in addition to its other authority under the subsection) to determine by regulation or order that any given activity of a SAIF-member State or Federal savings association poses a serious threat of loss to SAIF. Having made such a determination, the FDIC may prohibit any SAIF member from engaging in the activity directly. Activities permissible for Federal savings associations are not immune from scrutiny under this subsection.

3. No liability for activities conducted indirectly.—Subsection (m)(3) also bars a SAIF member from assuming liability for any activity conducted indirectly, subject to a narrow exception.

4. Other authority not affected.—The restrictions imposed and powers granted under subsection (m) are independent of those under other provisions of law. The FDIC's authority under the subsection does not limit the authority of COSA or a State charterer to impose more stringent restrictions, nor does the authority of those agencies limit that of the FDIC.

D. Prohibition against including unidentifiable intangible assets in calculating capital

This section of the bill also adds to section 18 of the FDI Act a new subsection (n), which prohibits any insured bank or insured savings association from including any unidentifiable intangible asset acquired after April 12, 1989, in calculating its regulatory capital. The only exception is for goodwill resulting from an acquisition for which the appropriate application under the Savings and Loan Holding Company Act was filed on or before March 12, 1989.

SECTION 223. INVESTMENT ACTIVITIES OF STATE SAVINGS ASSOCIATIONS

This section adds to the FDI Act a new section 28, relating to the activities of State savings associations. Section 28 has four key provisions:

(1) a prohibition against equity investments that are not permissible for a Federal savings association;

(2) a general rule relating to other State-authorized activities that are not permissible for a Federal savings association;

(3) a modified version of that rule applicable when the only difference between State and Federal powers is that a State savings association may engage in a greater amount of a given activity than can a Federal savings association; and

(4) special rules for corporate debt securities that are not of investment grade (commonly known as "junk bonds").

An activity is not permissible for a Federal savings association for purposes of section 28 if, for example, it is impermissible for a Federal savings association under regulations prescribed by the Chairman of the Office of Savings Associations pursuant to section 5(c) of the Home Owners' Loan Act. Section 5(c) permits a Federal savings association to engage in various activities, but only "to such extent, and subject to such rules and regulations as the Chairman may prescribe from time to time."

A. General rule

Subsection (a) prohibits a State savings association from engaging as principal, after January 1, 1990, in any type of activity that is not permissible for a Federal savings association unless both parts of the following two-part test are satisfied:

(1) the FDIC has determined that the activity in question would pose no significant risk of loss to the deposit insurance fund of which the savings association is a member; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act (section 301 of the bill).

The "fully phased-in capital standards" are those that will apply after any phase-in periods in either (1) the capital standards for savings associations, or (2) the capital standards for national banks (as the standards for savings associations are keyed to those for national banks). Under section 5(t)(4), the standards for savings associations must be fully implemented by June 1, 1991. The risk-based standards for national banks are scheduled to rise from 7.25 percent to 8.0 percent on December 31, 1992. 54 Fed. Reg. 4168, 4182 (1989). Section 5(t)(3), in requiring that certain subsidiaries be separately capitalized, provides a phase-in schedule that ends on June 30, 1994. Thus, for purposes of section 28, the fully phased-in capital standards are those that will apply to all thrift institutions once all such phase-in periods have expired.

Subsection (a) does not apply to activities that a savings association engages in only as its customer's agent, for such activities generally pose little risk of loss to the deposit insurance fund. Such activities could, however, be restricted under other provisions of law, such as new section 18(m)(3) of the Federal Deposit Insurance Act (added by section 222(4) of the bill), which authorizes the FDIC to prohibit any activity found to pose a serious threat of loss to SAIF.

B. Differences of magnitude

Subsection (b) applies when an activity is permissible for a Federal savings association and a State savings association seeks to engage in that activity in an amount greater than that permissible for a Federal savings association. Under subsection (b), the State savings association may engage in that higher amount of the activity so long as both parts of the following two-part test are satisfied:

(1) the FDIC has *not* determined that engaging in that higher amount of the activity would pose any significant risk of loss to the deposit insurance fund; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

The second part of the test (relating to capital) is identical to that under subsection (a). The first part (relating to risk) differs from that under subsection (a) in that it does not require a *prior* determination by the FDIC on the issue of risk: it is sufficient that the FDIC has *not* determined that the higher amount of the activity permitted by the State poses a significant risk of loss to the deposit insurance fund.

Subsection (a) applies to activities conducted after January 1, 1990.

Subsection (b) does *not* apply to three types of investments that are dealt with under other subsections of section 28:

(1) shares of corporations that exceed the amount permissible for a Federal savings association, which are governed by subsection (a);

(2) nonresidential real-estate loans, which are also governed by subsection (a); and

(3) junk bonds, which are governed by subsection (d).

C. Prohibition against equity investments

Effective as soon as the bill becomes law, subsection (c) prohibits a State savings association from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a Federal savings association to acquire and retain directly. The prohibition applies to equity investments in real estate, investments in equity securities, and any other equity investment. In applying subsection (c), Federal regulators should look to the substance of the investment and not merely to the form. Any transaction that is in substance an equity investment is covered by subsection (c), even if the transaction is nominally a loan or other permissible transaction.

There is a limited exception for shares of service corporations. Such shares must, however, meet the two-part test of subsection (a) if either (1) the aggregate amount of the savings association's investment in service corporations exceeds that permissible for a Federal savings association; or (2) the service corporation engages in any activity that is not permissible for a service corporation of a Federal savings association. By the same token, subsection (c) does not restrict investments in service corporations that are permissible for a Federal savings association.

A State savings association must divest itself of any equity investment that is not permissible either (1) for a Federal savings association directly or (2) under the exception for shares of service corporations. Any such investment held when the bill becomes law must be divested as quickly as can be prudently done, as determined by the FDIC, and in any event not later than July 1, 1994. No such investment may be acquired after the bill becomes law.

Subsection (c) overrides subsections (a) and (b). Thus those subsections cannot be used to circumvent subsection (c).

D. Corporate debt securities that are not of investment grade

Subsection (d) contains a modified version of subsection (a) applicable to investments in junk bonds (i.e., corporate debt securities that are not rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization), as well as a special rule for junk bonds held through subsidiaries.

1. General rule.—Under subsection (d)(1), a State savings association may not, directly or through a subsidiary, acquire or retain more in junk bonds than it could acquire directly if it were a Federal savings association with the same portfolio of commercial loans and other investments, unless:

(1) the FDIC has determined that no significant risk of loss to the deposit insurance fund would be posed if the savings association held the amount of junk bonds in question; and

(2) the savings association has enough capital to meet the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act, or would have enough capital to meet those standards if it were not required to exclude junk bonds from its capital pursuant to subsection (d)(4).

This two-part test differs from that of subsection (a) in that the savings association may satisfy the second part (relating to capital) by including in its capital certain investments by its subsidiaries in junk bonds, even though subsection (d)(4) generally requires that such investments be excluded from capital.

As subsection (d)(1) applies to investments made "directly or through a subsidiary," the junk-bond investments of the savings association are aggregated with those of its subsidiaries. The two-part test must be satisfied for the aggregate amount to exceed the amount that the savings association could acquire directly if it were a Federal savings association (taking all other relevant facts into account, such as the amount of the association's outstanding commerical loans).

2. Review procedures for existing investments.—Subsection (d)(1) takes effect as soon as the bill becomes law, but junk bonds held on the date of enactment may be retained for 12 months. Under subsection (d)(2), a State savings association must file an application with the FDIC within 90 days after the bill becomes law if the savings association wishes to retain junk bonds in an amount greater than what it could acquire directly if it were a Federal savings association. The FDIC must act on such applications within 10 months after the bill becomes law.

In acting on the applications, the FDIC must apply the two-part test of subsection (d)(1), with one narrow exception: a savings association may satisfy the second part of that test (relating to capital) by convincing the FDIC that it *will* have enough capital to meet the fully phased-in capital standards within a reasonable time (not to exceed six months) after the FDIC's decision, even if the savings association does not meet those standards at the time of that decision. In applying the first part of the test (relating to risk), the FDIC should consider, among other relevant factors, the risks of and returns on the junk bonds, the savings association's capital ratios, and the savings association's management expertise and past performance on such investments.

In approving an application, the FDIC may impose any conditions it determines to be appropriate in light of the two-part test in subsection (d)(1). Thus if the FDIC determines that part of a savings association's junk-bond portfolio poses a significant risk of loss to the deposit insurance fund, the FDIC could require that part to be sold, separately capitalized, transferred to a separately capitalized subsidiary, or otherwise restricted.

Subsection (d)(3) provides a divestiture schedule that will apply to the extent that the FDIC does not permit a savings association to retain junk bonds in an amount greater than what the savings association could acquire directly if it were a Federal savings association.

3. Separate capital requirement for certain junk bonds held through subsidiaries.—New section 5(t)(3) of the Home Owners' Loan Act generally requires a subsidiary of a thrift institution to be separately capitalized if it engages as principal in any activity not permissible for a national bank. But subsection (d)(3) of section 28 creates a special rule for junk bonds, applicable in place of section 5(t)(3).

Under section 5(t)(3), if a State savings association holds junk bonds through a subsidiary and the aggregate amount of such bonds held by the savings association and its subsidaries exceeds the amount that the savings association could require directly if it were a Federal savings association, then the excess amount is not counted as part of the savings association's capital (unless the FDIC, in approving an application under subsection (d)(1) or (d)(2)), has authorized the savings association to count the excess amount as part of its capital).

E. Determination by regulation or order

Determinations under section 28 may be made by regulation or order.

F. Definition of "activity"

As used in section 28, "activity" includes acquiring or retaining any investment. However, subsections (a) and (b) do not require a savings association to divest itself of assets acquired before the bill became law (although divestiture may be required by subsection (c) or (d), as discussed above).

G. Other authority not affected

Section 28 does not limit any authority of the FDIC under other provisions of law, such as new section 18(m)(3) of the Federal Deposit Insurance Act. Likewise, section 28 does not restrict any authority of COSA or of a State to impose more stringent restrictions.

SECTION 224. LOAN-TO-VALUE RATIOS

This section sets minimum collateral standards for loans secured by real estate, so that such a loan will not exceed a specified percentage of the appraised value of the collateral. The percentage varies with the riskiness of the collateral. Loans secured by the most stable collateral, homes, may be made in an amount up to 95 percent of the appraised value of the property. Loans secured by the most risky collateral, raw land to be developed, may be made in an amount up to 65 percent of the appraised value. Exceptions are made for loans to active farming operations and loans guaranteed by a Federal agency. The appropriate Federal banking agency may, for reasons of safety and soundness, increase or decrease the ratios.

SECTION 225. NONDISCRIMINATION

This section affirms that the FDI Act is not intended to discriminate against State nonmember banks or State savings associations. This statement of purpose does not impair the FDIC's authority under other provisions of law (e.g., its authority under section 222 of the bill to restrict activities of a State savings association that pose a serious risk of loss to the deposit insurance fund).

SECTION 226. BROKERED DEPOSITS

Under this section, an insured financial institution may not accept any new deposits by or through a deposit broker if the FDIC has determined that the institution is not in compliance with its applicable capital standards. The FDIC may waive this restriction for a given institution if it finds that acceptance of brokered deposits by that institution would not constitute an unsafe or unsound practice.

SECTION 227. CONTRACTS BETWEEN FINANCIAL INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS OR SERVICES

Under this section, an insured financial institution or financial institution holding company may not enter into any contract that requires a person supplying goods or services to that institution or holding company also to purchase any asset of the institution or holding company (if the asset is not directly related to providing such goods or services), to invest in the stock of the in-

stitution or holding company, to make any other type of investment in the institution or holding company, or to make a deposit in that institution or an affiliated institution. However, the prohibition applies only if the purchase, investment, or deposit (1) would have an anticompetitive effect that would be prohibited under the antitrust laws, or (2) would adversely affect the safety or soundness of the financial institution or holding company involved (as determined by the appropriate Federal banking agency). Thus, for example, a financial institution that contracts to sell a vendor an asset at a price above market value in exchange for a long-term service contract on terms favorable to the vendor, would be in violation of the prohibition if the appropriate Federal banking agency determined that the contractual terms were intended to artificially inflate the institution's capital and would thus adversely affect the institution's safety or soundness. This section creates no private right of action.

This section requires the General Accounting Office to study the contracting practices prevailing between vendors and insured financial institutions and holding companies and the extent to which such contracts have been used to erode the financial integrity of such institutions and holding companies, and to report to the House and Senate Banking Committees within six months after the bill becomes law.

This section does not limit the authority of any Federal banking agency or any other unit of the Government to act against anticompetitive, unsafe, or unsound practices.

TITLE III—CHAIRMAN OF THE OFFICE OF SAVINGS ASSOCIATIONS

SECTION 301. RECODIFICATION OF THE HOME OWNERS' LOAN ACT OF 1933

The bill dissolves the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, transfers to the Chairman of the Office of Savings Associations (the "Chairman" or "COSA") most of the regulatory authority over savings associations and savings and loan holding companies heretofore possessed by the Bank Board and FSLIC, repeals title IV of the National Housing Act (relating to FSLIC and its regulatory authority), and transfers to the Home Owners' Loan Act of 1933 ("HOLA") many of the provisions currently in title IV.

To facilitate these and other changes, this section reenacts the Home Owners' Loan Act. Under the new Act, COSA charters Federal savings associations and is the primary Federal regualtor of all savings associations and savings and loan holding companies.

A. Definitions

1. Chairman.—New section 2(1) of the Home Owners' Loan Act defines "Chairman" as the Chairman of the Office of Savings Associations.

2. Savings association.—Under new section 2(2), "savings association" has the same meaning as in section 3(u) of the FDI Act: (1) an institution whose accounts were insured by FSLIC immediately before the bill became law (and that has not subsequently become a bank); (2) a Federal savings and loan asociation or Federal savings bank; (3) a State savings and loan association, building and loan association, or homestead association; and (4) any other corporation that the FDIC determines to be operating in substantially the same manner as a savings and loan association.

3. Federal savings association.—New section 2(3) defines "Federal savings association" to include a Federal savings bank that was previously chartered as a State savings bank and that became a Federal savings bank under section 5(o), even if the institution is a Bank Insurance Fund member.

4. Federal banking agencies.—Under new section 2(4), "Federal banking agencies" means the Office of the Comptroller of the Currency, the Federal Reserve Board, and the FDIC.

B. Supervision of savings associations

1. Supervision of savings associations.—New section 3(a) authorizes the Chairman to provide for the examination, safe and sound operation, and regulation of all savings associations. The overriding purpose of the Chairman's regulatory authority is to ensure that savings associations operate safely and soundly and, while so doing, provide credit for housing.

2. Accounting standards.—New section 3(b) requires the Chairman to prescribe uniform accounting and disclosure standards for all savings associations, for use in determining compliance with all applicable regulations. The accounting standards must incorporate generally accepted accounting principles to the same extent that such principles are used to determine compliance with regulations of the Federal banking agencies. Under new section 3(c), moreover, the accounting standards must be no less stringent than those of the Comptroller of the Currency.

The Chairman should require savings associations to achieve full compliance with the accounting standards as soon as possible, but in no event later than under the schedule currently provided in section 563.23-3 of title 12, Code of Federal Regulations. No deviation from the standards is permissible after December 31, 1993. The Chairman may at any time promulgate more stringent accounting standards if he determines that they are necessary to ensure the safe and sound operation of savings associations. A standard is more stringent to the extent that it is more conservative in valuing assets or liabilities or in timing the recognition of income or expenses.

3. Stringency of standards.—Under new section 3(c), all regulations and policies of COSA relating to the safe and sound operation of savings associations—including policies relating to accounting, asset classification, and appraisals—must be at least as stringent as the regulations and policies of the Office of the Comptroller of the Currency.

4. Accounts at savings associations as legal investments.—New section 3(d) preserves current law permitting certain public, fiduciary, and corporate funds to be deposited in insured savings associations.

5. Prohibition on involvement in lotteries.—New section 3(e) preserves current law prohibiting insured savings associations from participating in lotteries (other than accepting funds from, or performing lawful services for, State-sponsored lotteries).

6. Lending disclosures.—Section 3(f) retains the current requirement that the true recipient of a mortgage loan be disclosed before any such loan is made to an agent or trustee.

7. Usury override.—Current law overriding State usury limits under certain circumstances is transferred into new section 3(g) from the National Housing Act. The transfer in no way changes current law.

8. Issuance of securities.—Under new section 3(h), a savings association needs the Chairman's prior approval to issue securities that guarantee a definite maturity date, and may not issue any securities except in a form approved by the Chairman. The National Housing Act currently contains a similar provision.

9. Audit.—Section 3(i) creates a new statutory requirement that every savings association and service corporation must, at its own expense, be audited by an independent auditor at least once in each calendar year. COSA is to establish rules governing the selection of the auditor and the performance of the audit, as well as procedures for monitoring compliance with the auditing requirement. COSA may take appropriate action to assure compliance, such as requiring the auditor to perform the audit again at the auditor's own expense.

C. Chairman of the Office of Savings Associations

1. Establishment.—Section 4(a)(1) establishes COSA as a bureau in the Department of the Treasury, and transfers to COSA all powers and functions of the Bank Board that are not otherwise transferred or terminated by the bill. Sixty days after the bill becomes law, the Federal Home Loan Bank Board will be dissolved by operation of law. During that 60-day period, the Chairman of the Bank Board may take whatever steps are necessary to carry out the dissolution of the Bank Board.

2. Duties.—Under section 4(a)(2), the Chairman of the Office of Savings Associations shall supervise all savings associations and promulgate and enforce any regulations and orders necessary to carry out his statutory responsibilities. The Chairman shall perform his duties under the general direction of the Secretary of the Treasury, but the Secretary may not intervene in any matter or proceeding before the Chairman.

3. Appointment of Chairman.—Under section 4(b), the Chairman shall be appointed by the President for a five-year term, subject to confirmation by the Senate. The President may remove the Chairman for cause.

The current Chairman of the Federal Home Loan Bank Board is to serve as the initial Chairman of the Office of Savings Associations until his term as Chairman of the Bank Board would have expired had the Bank Board remained in existence.

4. Appointment of staff.—Section 4(c) authorizes the Chairman to employ and fix the compensation of his employees, attorneys, and agents. That compensation is to be determined solely by the Chairman, without regard to other provisions of law. In fixing that compensation, the Chairman shall consult, and seek to maintain comparability with the compensation at, the other Federal banking agencies. COSA and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with specialized expertise needed to make sure that federally insured financial institutions operate safely and soundly.

5. Salaries and expenses.—Under section 4(d), all expenses of COSA, including the salaries of the Chairman and other employees, are to be paid from assessments levied under the Home Owners' Loan Act. Those funds shall not be treated as Government funds or appropriated monies. Compensation (other than that of the Chairman)

shall be paid without regard to other laws applicable to officers or employees of the United States.

6. Annual report and communications to Congress.—Section 4(f) requires the Chairman to make an annual report to Congress.

Under section 4(g), whenever the Chairman submits any budget estimate or request to any officer or employee in the executive branch of the Government, he shall concurrently transmit copies of that estimate or request to Congress. Whenever the Chairman submits any legislative recommendation to the President or to the Office of Management and Budget (or any successor agency), he shall concurrently transmit copies of it to Congress. No officer or agency may require the Chairman to submit legislative recommendations or testimony to any other officer or agency for prior approval, comments, or review.

D. Liquidity

Under section 5A of the Federal Home Loan Bank Act, insured savings institutions and other members of a Federal home loan bank are currently required to hold certain liquid assets in the manner and amount prescribed by the Federal Home Loan Bank Board. New section 4A of the Home Owners' Loan Act retains this requirement, applies it to all savings associations, and substitutes COSA for the Bank Board.

E. Federal savings associations

1. Authority to charter.—New section 5(a) transfers to COSA the Bank Board's current authority to charter, examine, and regulate Federal savings associations. Current law is also amended to emphasize that the lending and investment powers conferred on Federal savings associations by section 5 must be used safely and soundly.

2. Deposits.—New section 5(b)(1) preserves the current authority of Federal savings associations to accept various types of accounts, including time and demand deposits. COSA, rather than the Bank Board, is to prescribe the appropriate rules governing those accounts.

3. Authority to borrow and issue capital stock.—New section 5(b)(2) preserves current law authorizing Federal savings associations to borrow and to issue notes and other securities (including capital stock), with COSA rather than the Bank Board as the regulator.

4. Credit cards.—New section 5(b)(4) retains current law permitting Federal savings associations to issue credit cards, with COSA rather than the Bank Board prescribing regulations.

5. Mutual capital certificates and net-worth certificates.—New section 5(b)(5) preserves current law regarding mutual capital certificates and net-worth certificates, with COSA rather than the Bank Board as the regulator.

6. Loans and investments.—Current law governing loans and other investments permissible for a Federal savings association is retained by new section 5(c), with the following changes:

(a) *COSA*, rather the Bank Board, is the regulator.

(b) A Federal savings association may currently devote up to 40 percent of its assets to *loans secured by nonresidential real property*, regardless of whether the association has any capital. Under new section 5(c) such loans may not, in the aggregate, exceed 400 percent of the savings association's capital. COSA is given limited discretion to allow such loans to account for a higher proportion of a savings association's capital. COSA must, however, find that the additional amount will pose no significant risk to the safe or sound operation of the institution involved, and that the increased authority is consistent with prudent operating practices. If an institution is permitted to exceed the 400-percent limit, COSA must closely monitor the institution's condition so as to ensure compliance with all applicable laws.

(c) Obsolete language authorizing Federal savings associations to make a limited amount of *commercial loans* before 1984 is deleted, and the current authority of a Federal savings association to devote up to 10 percent of its assets to commercial loans is retained.

7. Regulatory authority.—New section 5(d) transfers to COSA the Bank Board's current authority to enforce the Home Owners' Loan Act, including authority to retain outside counsel, to sue and be sued, and to examine savings associations. The section specifically authorizes COSA to take enforcement action under section 8 of the Federal Deposit Insurance Act, and also incorporates the authority to examine savings associations and their affiliates that is currently in section 407(m) of the National Housing Act. COSA is entitled to prompt and complete access to the books, records, officers, directors, and employees of a savings association and its affiliates. If such access is not forthcoming, COSA may obtain injunctive relief from the appropriate district court.

8. Receiverships.—New section 5(d)(2)(A) of the Home Owners' Loan Act adds three additional grounds of the appointment of a conservator or receiver for a Federal savings association. Two of these are included in the term "in danger of default," as defined in section 3 of the FDI Act (section 204 of the bill): illiquidity or threatened illiquidity, and threatened insolvency. The third ground is failure to obtain a bank charter when required to do so after failing the qualified thrift lender test.

New section 5(d)(2) (C) and (E) incorporates with amendments former section 406(c)(1)(B) of the National Housing Act, which deals with the appointment of a conservator or receiver for a State savings association. The amendments permit a conservator or receiver to be appointed in cases of illiquidity, threatened illiquidity, or threatened insolvency. The amendments also reduce from 90 days to 30 days the period during which COSA must seek State approval for the custodial action.

New section 5(d)(2)(G) of HOLA specifies that only the FDIC may be appointed conservator or receiver to liquidate or wind up the affairs of a savings association.

Regulations issued by the COSA under new section 5(d)(3) will not apply to the FDIC or institutions in the FDIC's custody once the FDIC issues rules and regulations relating to its own conduct as conservator and receiver (section 214 of the bill).

9. Money laundering.—New section 5(d)(6) consolidates provisions of current law requiring insured savings associations to establish procedures designed to assure and monitor compliance with money-laundering statutes.

10. Character and responsibility.—New section 5(e) preserves current law allowing a Federal charter to be granted only to persons of good character and responsibility.

11. Federal home loan bank membership.—New section 5(f) preserves current law requiring each Federal savings association to be a member of the appropriate Federal home loan bank.

12. Preferred shares.—New section 5(g) repeals obsolete provisions permitting the Secretary of the Treasury to purchase preferred shares of Federal savings associations, and authorizing the Bank Board to require the Secretary to purchase such shares under certain circumstances.

13. Taxation.—New section 5(h) maintains Federal savings associations' current exemption from discriminatory State and local taxation.

14. Conversions.—Under current law, a qualified State savings association may become a Federal savings association, and a Federal savings association may become a State savings association if the conversion is permitted by the State and authorized by the association's shareholders or members. Mutual savings associations that become stock savings associations must comply with procedures intended to ensure equitable treatment for all members of the mutual association.

New section 5(i) preserves these provisions, with COSA rather than the Bank Board as the regulator.

15. Conversions of State savings banks into Federal savings banks.—Under section 5(i)(5), the Bank Board may currently permit: (1) a Federal savings bank chartered as such before October 15, 1982, to continue to make investments or engage in activities that were permissible for it as a Federal savings bank before that date; and (2) a Federal savings bank formerly organized as a mutual savings bank under State law to continue to make investments or engage in activities not otherwise authorized for Federal savings associations, to the degree it was authorized to do so as a mutual savings bank under State law. If a Federal savings association acquires (by merger or consolidation) a Federal savings bank enjoying the benefits of section 5(i)(5), the savings association may continue to enjoy those benefits.

New section 5(i)(4) retains those provisions, with COSA rather than the Bank Board as the regulator. COSA should make full use of its authority to circumscribe or prohibit any grandfathered activities that pose excessive risks to the institution in question or to the pertinent deposit insurance fund. This seciton in no way affects the FDIC's authority under sections 222 and 402(e) of the bill.

16. Subscription for shares.—New section 5(j) repeals an obsolete provision under which the Bank Board could require the Secretary of the Treasury to purchase certain shares of a Federal association.

17. Depository of public money.—New section 5(k) preserves current law permitting the Secretary of the Treasury to designate any Federal savings association or member of a Federal home loan bank as a depository of public funds and as a fiscal agent for the Government, and expands that provision to include insured State savings associations that are not members of a Federal home loan bank.

18. Retirement accounts.—New section 5(l) retains existing authority for a Federal savings association to act as trustee of any trust organized in the United States and forming part of a qualified stock-bonus, pension, or profit-sharing plan.

19. Branching.—New section 5(m) preserves current law requiring prior Bank Board approval either for branching by savings associations located in the District of Columbia, or for branching into the District of Columbia. COSA, rather than the Bank Board, is the regulator.

20. Trusts.—New section 5(n) preserves current law, under which a Federal savings association may receive a special permit (when consistent with State law) authorizing the association to provide trust services and otherwise act as a fiduciary.

21. Conversion of certain State savings banks.—Section 5(o) currently authorizes FDIC-insured State savings banks to become FDIC-insured Federal savings banks. The FDIC is also granted certain emergency powers to require an FDIC-insured savings bank in danger of closing to become a Federal stock savings bank.

New section 5(o) provides similar authority for a BIF-member State savings bank to become a BIF-member Federal savings bank, and for the FDIC to require a State savings bank in danger of closing to become a Federal stock savings bank.

22. Tying.—New section 5(q) consolidates anti-tying restrictions on Federal and State savings associations—which are currently in section 408(q)(1) of the National Housing Act as well as in section 5(q)—and makes COSA the regulator.

23. Out-of-State branches.—New section 5(r) retains current law regarding out-of-State branching by Federal savings associations.

24. Minimum capital requirements.—Under current law, the Bank Board must establish minimum capital standards for all thrift institutions and require all institutions to meet those standards. The Bank Board may also establish different capital levels for particular institutions. Failure to comply may be treated as an unsafe or unsound practice. The Bank Board may require an institution to submit and adhere to a plan for increasing its capital. Progress in complying with the plan is to be considered whenever the institution seeks regulatory approval for any action that might impede progress towards achieving the required capital level. New section 5(s) preserves these provisions, but with COSA rather than the Bank Board as the regulator. Under section 5(s), COSA can require a given institution to meet capital standards more stringent than the uniform standards prescribed under section 5(t).

25. Capital standards.—New section 5(t)(1) requires COSA to establish capital standards for all savings associations, and provides penalties for any association that fails to comply with those standards.

(a) Capital standards to be promulgated by COSA.—New section 5(t)(1) requires COSA to promulgate, within 90 days after the bill becomes law, final regulations setting uniform capital standards for savings associations, which must be fully implemented by June 1, 1991. The standards must be no less stringent than those applicable to national banks, and must require savings associations to meet standards no less stringent than both the "leverage ratio" and the risk-based capital standard applicable to national banks. The "leverage ratio" refers to capital requirements based on an institution's total assets without any adjustment based on the relative risk of the asset.

The risk-based capital standard refers to the capital requirement based on an institution's risk-weighted assets.

COSA's risk-based capital standard may deviate from that imposed on national banks to reflect interest rate or other risks, but any such deviations must not, taken as a whole, result in materially lower risk-based capital being required of savings associations than is required of national banks.

The leverage ratio applicable to savings associations must be no less stringent than that applicable to national banks, and must in any event be at least 3 percent of total assets, even if the leverage ratio applicable to national banks is some lesser percentage.

Finally, if the appropriate Federal banking agency ceases to impose risk-based capital standards on national banks, COSA must establish uniform capital standards that, taken as a whole, are no less stringent than the capital standards then applicable to national banks.

(b) Goodwill.—New section 5(t)(2) permits a savings association to include certain goodwill to a limited extent in computing capital—both under the risk-based standard and under the leverage ratio—even if national bank capital standards would exclude such goodwill.

In accounting for the acquisition of an institution under the purchase method of accounting, goodwill represents the amount by which the purchase price exceeds the fair market value of the institution's identifiable assets. As the Comptroller of the Currency has observed, "The true market value of [goodwill and other] intangible assets is often difficult to ascertain, as it involves a number of assumptions which are subject to changes in general economic circumstances or to changes in an individual institution's future prospects. Experience has shown that the value of many intangibles declines when the condition of a bank deteriorates, the most critical point at which capital is needed. It is because of this inherent weakness in the value of certain intangibles that goodwill . . . cannot be relied upon for capital support, and therefore [is] not counted in the determination of capital adequacy."

Goodwill shall be included under two circumstances. First, goodwill in existence on April 12, 1989, is to be included in calculating capital so long as the goodwill will be amortized on a straightline basis over the shorter of 25 years, or the remaining period for amortization in effect as of April 12, 1989. Second, goodwill resulting from the acquisition of a savings association or holding company for which the pertinent regulatory application was filed on or before March 12, 1989, shall be counted incalculating capital, so long as the goodwill is amortized on a straightline basis over 10 years or such shorter period as may be determined by COSA with the concurrence of the Secretary of the Treasury.

Every savings association must maintain tangible capital (excluding, e.g., goodwill) equal to at least 1.5 percent of the association's total assets. Any savings association that fails to do so is subject to consequences such as the growth restrictions of new section 5(t)(5) (discussed below).

(c) Separate capitalization for certain subsidiaries.—In computing a savings association's capital, the savings association's entire investment in and extensions of credit to any subsidiary engaged as principal in activities not permissible for a national bank must be deducted from the savings association's capital. This rule, set forth in new section 5(t)(3), does not apply under the following circumstances:

(1) the subsidiary is engaged solely in mortgage-banking activities;

(2) the subsidiary is itself a savings association, or a company whose sole investment is a savings association, and was acquired by the parent savings association before April 12, 1989;

(3) the subsidiary invests in corporate debt securities that are not permissible for national banks to invest in, but does not engage as principal in any other activity impermissible for a national bank; or

(4) the parent savings association (a) is a Federal savings bank that was chartered before October 15, 1982, as a State savings bank, or (b) acquired its principal assets from an institution that was chartered before October 15, 1982, as a State savings bank.

(d) Transition rule.—If a subsidiary is engaged in activities requiring the parent savings association to deduct from its capital its investment in and loans to the subsidiary, new section 5(t)(4) provides a transition rule. Under the rule, the parent may include in its computation of capital a certain percentage of its investments in and loans to the subsidiary on the date for which the parent's capital is being determined (or its investments in and loans to the subsidiary on April 12, 1989, whichever is less). The includible percentage declines each year over a five-year period so that after five years no such investment or loan may be included. Moreover, the FDIC may, by order, and in its sole discretion, require a particular institution to use a lower percentage than prescribed under the five-year phase-out if the FDIC determines that using the prescribed percentage would be unsafe or unsound.

(e) Schedule.—The capital standards mandated by section 5(t) must be fully implemented by June 1, 1991, and COSA should prescribe a phase-in schedule culminating in full implementation by that date.

(f) Restrictions on growth.—New section 5(t)(4) imposes certain consequences on savings associations that do not meet the capital standards applicable under section 5(t)(1). Until June 1, 1991, any institution not in compliance with applicable capital standards must submit a binding plan for increasing its capital. The plan must be acceptable to COSA, must set forth the types and levels of activities that the savings association will engage in to raise capital, and must provide for any growth in assets to be fully supported by increases in tangible capital equal in percentage amount to the applicable capital standard. COSA will retain discretion to further restrict the savings association's asset growth.

After June 1, 1991, asset growth by any savings association not in compliance with applicable capital standards must not exceed the amount of interest credited on the savings association's deposits, and must be limited to growth in residential-housing-related assets and consumer loans. Any growth in assets must be supported by tangible capital equal to at least 6 percent of the asset growth (or in COSA's discretion, tangible capital equal to the percentage required under the capital standard then in effect).

Any savings association that can meet minimum capital standards only by including goodwill must support any growth in assets by increases in tangible capital: before June 1, 1991, by tangible capital equal in percentage amount to the then-applicable capital standards; and after June 1, 1991, by tangible capital in an amount equal to 6 percent of the asset growth (or in COSA's discretion, tangible capital equal to the percentage required under the capital standard then in effect).

Finally, COSA may restrict the asset growth of any savings association that takes excessive risks or pays excessive rates for deposits, even if the savings association meets all capital standards.

26. Limits on loans to one borrower.—New section 5(u) generally makes savings associations subject to the same limit on loans to one borrower as apply to national banks.

The limits are incorporated by reference, and are self-executing.

A national bank's loans to one borrower are limited by statute to 15 percent of the bank's unimpaired capital and unimpaired surplus, except that loans to a given borrower "fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding" may account for an additional 10 percent of the bank's unimpaired capital and unimpaired surplus.

New section 5(c) exempts from the general rule two classes of loans by savings associations: (1) loans made to finance the sale of property that a savings association acquired by foreclosure in satisfaction of a debt previously contracted in good faith, which may be as much as 50 percent of the savings association's unimpaired capital and unimpaired surplus; and (2) loans of up to $500,000. The $500,000 exception is intended to facilitate residential mortgage loans.

27. Reports of condition.—Under new section (5)(v), every savings association must submit reports of condition that identify potential interest-rate and credit risks, the type and value of assistance received, the identity of all subsidiaries and affiliates, and equity investments made by the association and its affiliates, as well as any other information required by COSA. Information from the reports must be made available to the public upon request unless COSA determines (1) that a particular item or class of information should be withheld to protect the safety or soundness of the institutions involved, or (2) that disclosure of the information would not otherwise be in the public interest. COSA's determination not to permit disclosure must be in writing. If COSA decides to restrict disclosure of any item for savings associations generally, the reasons for the restriction must be published in the Federal Register. COSA may not withhold information from the Chairman and ranking minority member of the House or Senate Banking Committee.

F. Applicability

New section 7 preserves current law applying the Act to the United States, Puerto Rico, Guam, and the Virgin Islands.

G. District associations

New section 8 preserves current law governing the regulation of savings associations doing business in the District of Columbia, with COSA rather than the Bank Board as the regulator.

H. User fees; penalty for refusal to permit examination

New section 9 authorizes COSA to assess examination fees on savings associations and affiliated companies, including holding companies and their subsidiaries. COSA may also charge application fees. Moreover, fees may be assessed on any other institution for which COSA is the appropriate Federal regulatory agency (as defined in section 3 of the FDI Act), in proportion to the institution's assets or resources.

If any affiliate of a savings association refuses to permit an examination or to provide information requested by COSA, the savings association shall be subject to a civil penalty of up to $25,000 per day for each day that such refusal continues. A violation made with reckless disregard for the safety or soundness of the financial institution subjects the savings association to a civil penalty of up to $1 million per day.

To permit COSA to maintain a working capital fund, fees charged under this section may exceed actual expenses. Fee and assessment income may be used to pay all of COSA's salary expenses.

I. Regulation of savings and loan holding companies

Section 408 of the National Housing Act, also known as the Savings and Loan Holding Company Act, is transferred to section 10 of the Home Owners' Loan Act.

1. Definitions.—The definitions currently found in section 408(a) are reenacted as section 10(a) of the Home Owners' Loan Act, and amended to take into account the abolition of FSLIC, the FDIC's new role as deposit insurer for savings associations, and the establishment of COSA, and to make corresponding changes in terminology.

2. Registration and examination.—New section 10(b) preserves current law governing the registration and examination of savings and loan holding companies, with COSA rather than FSLIC as the regulator.

3. Holding company activities.—New section 10(c) generally preserves current law regarding savings and loan holding company activities. New section 10(c)(8) exempts from the activity restrictions of the Savings and Loan Holding Company Act any bank holding company regulated as such by the Federal Reserve Board, for the Bank Holding Company Act already stringently limits such a company's activities.

4. Acquisitions.—A savings and loan holding company must currently obtain FSLIC's prior approval before acquiring an additional savings association, and may not acquire shares of a savings institution that will not be a subsidiary. Interstate acquisitions of savings institutions are restricted. Section 10(e) preserves these provisions, with COSA instead of FSLIC as the regulator. Section 602 of the bill makes other substantive changes in these provisions, as will be discussed below.

5. Dividends.—Under current law, a savings association subsidiary of a savings and loan holding company may not declare a dividend without giving FSLIC 30 days advance notice. This provision becomes section 10(f) of the Home Owners' Loan Act, with COSA as the regulator.

6. Administration and enforcement.—Current provisions authorizing FSLIC to issue regulations, examine savings and loan holding companies and affiliated companies, and take enforcement action (including requiring holding companies to divest subsidiaries) become section 10(g) of the Home Owners' Loan Act, with COSA as the regulator.

7. Penalties.—Any company that willfully violates any provision of the Savings and Loan Holding Company Act or any regulation or order issued under the Act may be fined up to $1,000 per day. Any individual who willfully commits such a violation may be fined up to $10,000, imprisoned for up to one year, or both.

Under new section 10(i) of the Home Owners' Loan Act, any company that willfully commits such a violation may be fined up to $1 million per day. Any individual who, with reckless disregard for the safety and soundness of the savings association, participates in such a violation may be fined up to $1 million per day, imprisoned for up to 5 years, or both.

Any individual or company that willfully participates in a violation of any statutory provision governing savings and loan holding companies, or any regulation or order issued under such a provision, is subject to a civil penalty of up to $1 million per day. If the violation is not willful, the maximum civil penalty is $25,000 per day.

COSA's authority to act under section 10(i) is not affected by an individual's resignation or any other termination of the individual's employment.

8. Judicial review.—Section 10(k) preserves current law regarding judicial review of enforcement orders.

9. Treatment of FDIC-insured State savings banks and cooperative banks as savings associations.—Under current law, an FDIC-insured savings bank or cooperative bank may, if it meets the qualified thrift lender test, elect to be regulated under the Savings and Loan Holding Company Act rather than the Bank Holding Company Act. New section 10(l) retains that provision, with COSA as the regulator.

10. Qualified thrift lender test.—The qualified thrift lender test (or "QTL test"), currently section 408(o) of the National Housing Act, is intended to measure a thrift institution's involvement in housing finance. New section 10(m) of the Home Owners' Loan Act reenacts the current test and increases the consequences of failing to comply. (Those additional consequences are preserved in section 303 of the bill, which revises the QTL test, effective July 1, 1991.)

a. Current consequences of failing to comply.—Under current law, there are two consequences. First, under section 10(e) of the Federal Home Loan Bank Act, a thrift institution that fails the QTL test is eligible to receive only a reduced amount of Federal home loan bank advances. Second, under section 408(c) of the National Housing Act, a diversified savings and loan holding company is subject to the same activity restrictions as a multiple savings and loan holding company if any of its subsidiary thrift institutions fails the test. The QTL test discussed here has no tax consequences; the Internal Revenue Code contains its own criteria for determining whether thrift institutions may qualify for benefits under certain tax provisions.

b. Additional consequences under this section.—Under new section 10(m), a savings association that fails to remain a qualified thrift lender will have a one-year grace period in which to requalify as a qualified thrift lender. If it fails to requalify during that period, the savings association must convert its charter to one or more bank charters within three years after it ceased to be a qualified thrift lender. As soon as a savings association ceases to be a qualified thrift lender, it may not expand its activities or open any additional branch offices. Three additional consequences take effect beginning three years after the savings association ceases to be a qualified thrift lender. First, the savings association may not obtain advances from any Federal home loan bank, and must promptly repay any outstanding advances. Second, the savings association may not engage, directly or through a subsidiary, in any activity that is not permissible either for a national bank or for a State bank (other than a savings bank) located in the State in which the savings association is located. Third, any company that controls the savings association will become subject to the Bank Holding Company Act in the same manner and to the same extent as if the company were a bank holding company (other than a savings bank holding company) and the savings association were a bank (other than a savings bank).

c. Conversion does not affect deposit insurance premiums.—Any bank that is chartered pursuant to section 10(m) because of a

savings association's failure to remain a qualified thrift lender must remain a member of the Savings Association Insurance Fund and pay SAIF assessments until it pays the exit fee (section 206(6) of the bill) and becomes a member of the Bank Insurance Fund, having paid any applicable entrance fee. In no case can such a bank become a BIF member before January 1, 1994. Such a bank does not become subject to BIF assessments until it becomes a BIF member.

11. Tying restrictions.—Section 10(n) preserves section 408(q)(2) of the National Housing Act, which currently prohibits a savings and loan holding company and its affiliates from engaging in certain tying arrangements.

12. Mutual holding companies.—Under section 10(o), a mutual savings association may form a holding company though a special entity known as a "mutual holding company." This preserves what is currently section 408(s) of the National Housing Act, but makes COSA the regulator.

J. Transactions With Affiliates, and Insider Lending.—Transactions between thrift institutions and their affiliates are currently governed by section 408 (d), (p)(1), and (t) of the National Housing Act. The bill replaces those subsections with a new section 11 in the Home Owners' Loan Act. Section 11 establishes a uniform approach to regulating transactions with affiliates, based on sections 23A, 23B, and 22(h) of the Federal Reserve Act. The limits in those sections are incorporated by reference, and are self-executing.

1. Transactions with affiliates: sections 23A and 23B.—Under new section 11(a), a savings association must comply with sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if the savings association were a member bank. Section 23A limits a bank's transactions with its affiliates (e.g., loans, extensions of credit, guarantees, investments, and purchases of assets). Transactions with any one affiliate are limited to 10 percent of the bank's capital stock and surplus, and transactions with all affiliates are limited to 20 percent of the bank's capital stock and surplus. All transactions with affiliates must be fully secured by specified types of collateral furnishing prescribed margins of protection. A bank may not purchase a low-quality asset from an affiliate unless it committed itself to do so before the affiliate acquired the asset.

Under section 23B, transactions between a bank and its affiliates must be on terms at least as favorable to the bank as comparable transactions with unaffiliated companies. When a bank acts as a fiduciary, section 23B limits purchases of securities or other assets from an affiliate. The section also prohibits a bank from advertising or agreeing that the bank will be responsible for an affiliate's obligations.

Three additional rules apply to savings associations under new section 11(a), reflecting the fact that affiliates of savings associations can engage in a far greater range of activities than affiliates of banks, and can thus expose the savings association to greater risk. First, a savings association may not make any loan or other extension of credit to an affiliate unless that affiliate is engaged only in activities permissible for bank holding companies. Second, a savings association may not purchase or invest in securities issued by an affiliate. Third, except as provided in section 304 of the bill (relating to certain mortgage-banking transactions), COSA may for reasons of safety and soundness impose more stringent restrictions on savings associations, but may not exempt transactions from or otherwise abridge section 23A or 23B. Exemptions from section 23A or 23B may be granted only by the Federal Reserve Board, as is currently the case with respect to all FDIC-insured banks. In granting exemptions, the Board may distinguish between banks and savings associations if the situation warrants.

2. Loans to officers, directors, and principal shareholders: section 22(h).—New section 11(b) applies section 22(h) of the Federal Reserve Act to savings associations in the same manner and to the same extent that that section applies to member banks. Section 22(h) applies the following safeguards to loans and other extensions of credit by an FDIC-insured bank to its executive officers, directors, and principal shareholders (collectively "insiders") and to companies controlled by those persons:

(1) An extension of credit to an insider or a company controlled by an insider must be made "on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons" and must not "involve more than the normal risk of repayment or present other unfavorable features."

(2) An extension of credit to an insider or a company controlled by an insider must be approved in advance by a disinterested majority of the bank's board of directors if that extension of credit, when aggregated with all other outstanding extensions of credit to the insider and companies controlled by the insider, exceeds a certain threshold (currently set at the higher of $25,000 or 5 percent of the bank's unimpaired capital and unimpaired surplus).

(3) The extension of credit, when aggregated with all other outstanding extensions of credit to the insider and companies controlled by the insider, must not exceed the limit on loans by a national bank to a single borrower.

COSA may for reasons of safety and soundness impose more stringent restrictions on savings associations, but may not exempt transactions from or otherwise abridge section 22(h). Exemptions may be granted only by the Federal Reserve Board, as is currently the case with respect to all FDIC-insured banks.

K. Advertising

Under current law, the Bank Board regulates the advertising practices of Federal savings associations and FSLIC regulates the advertising practices of State savings associations. The bill adds a specific statutory provision prohibiting any sale, plan, or practice, or any advertising, by any savings association, in violation of regulations promulgated by COSA.

L. Separability

Section 13 specifies that the provisions of the Home Owners' Loan Act are separable: if any provision is held invalid, the remainder of the Act will remain in force.

SECTION 302. REPEALS

This section repeals sections 407(m), 408, 409, 410, 413 414, and 416 of the National Housing Act. (Section 405 of the bill repeals the remaining sections of title IV of that Act.) All of these sections except section 416 are reenacted as part of the Home Owners' Loan Act. Section 416 required the FSLIC to promulgate capital recovery regulations for troubled institutions, and is obsolete in light of amendments made by the bill. The bill repeals section 403(b), which imposes geographical limits on lending, and section 408(p)(2), which restricts cross-marketing by a diversified savings and loan holding company.

SECTION 303. QUALIFIED THRIFT LENDER TEST

The qualified thrift lender test seeks to measure a thrift institution's involvement in residential mortgage lending. New section 10(m) of the Home Owners' Loan Act (added by section 301 of the bill) increases the consequences of failing to meet the current test. This section revises the QTL test itself, effective July 1, 1991.

To satisfy the current QTL test, a thrift institution must hold 60 percent of its total tangible assets in: (1) loans, equity positions, or securities that are in some way related to residential real estate or mobile homes; and (2) premises, furnishings, and equipment used by the institution or its subsidiaries. Up to 10 percentage points of the 60-percent requirement may be met by counting: (a) liquid assets (e.g., money-market mutual funds and short-term, investment grade corporate debt securities); and (b) a mortgage-origination credit.

A. General rule

1. Numerator: qualifying assets.—The revised test requires that at least 60 percent of a savings association's "portfolio assets" (as defined below) consist of the following assets:

(1) residential mortgage loans;
(2) residential construction loans;
(3) home-improvement loans;
(4) home-repair loans;
(5) mobile-home loans;
(6) mortgage-backed securities; and
(7) home-equity loans, to the extent that the loans are used to purchase, refinance, construct, improve, or repair domestic residential housing or mobile homes.

In addition, there is a mortgage-origination credit for one half of the dollar value of residential mortgages originated and sold during the last 90 days, which may count towards as much as 5 percentage points of the 60-point test.

If a loan finances both residential and nonresidential property (e.g., both apartments and a shopping mall), only the residential portion of the loan counts towards the QTL test.

Because home-equity loans are often used to finance personal consumption or for other purposes unrelated to housing finance, the Chairman of the Office of Savings Associations is required to determine annually—based on a survey of industry-wide patterns—how much of savings associations' home-equity loans are used to purchase, finance, construct, improve, or repair domestic residential housing or mobile homes. COSA will determine a general percentage, and savings associations may then count towards the QTL test that percentage of their home-equity loans.

This section is intended to refocus the QTL test on residential mortgage lending and to prevent the inclusion of other assets by regulatory interpretation.

2. Denominator: portfolio assets.—Under the revised test, the base against which the 60-percent requirement is applied is "portfolio assets." A savings association's portfolio assets consist of its total assets minus:

(1) the institution's own premises, furnishings, and equipment:
(2) liquid assets that regulators require the institution to hold; and
(3) goodwill and other intangible assets. Subtracting these three items from total

assets ensures that they are treated neutrally: they do not count either towards the 60-percent requirement or against the remaining 40 percent.

B. Consistent accounting required

Under the current test, FSLIC permits thrift institutions to use different accounting for the numerator of the QTL test (qualifying assets) than for the denominator (total tangible assets). Some assets that have appreciated in value are included in the numerator at market value but in the denominator at historic cost. Intangible assets (such as the value attributed to mortgage-servicing rights, purchased deposits, and branch networks) and leasehold improvements are included in the numerator but not in the denominator. Likewise, the assets of subsidiaries are included in the numerator but not in the denominator.

Under the revised test, the same accounting principles must be used for the numerator of the QTL test (qualifying assets) as for the denominator (portfolio assets). If a savings association counts the assets of a subsidiary towards the numerator, then those assets must also be counted towards the denominator.

C. Averaging

Under FSLIC's regulations, thrift institutions must meet the current QTL test on only 18 days out of every three years. This infrequent averaging facilitates manipulation.

The revised QTL test would be calculated using a daily or weekly average of a thrift institution's assets during the preceding two years.

SECTION 304. TRANSITIONAL RULE FOR CERTAIN TRANSACTIONS WITH AFFILIATES

Under new section 11(a) of the Home Owners' Loan Act (as added by section 301 of the bill), savings associations must comply with section 23A of the Federal Reserve Act, which imposes limits on transactions (e.g., loans and purchases of assets) between a depository institution and its affiliates. If an institution purchases a mortgage from an affiliate, the purchase counts towards the limits unless, before the affiliate originated or acquired the mortgage, the institution (1) had made its own independent credit evaluation of the mortgage, and (2) based on that evaluation, had agreed to acquire the mortgage from the affiliate. Under these circumstances, the institution is regarded as "taking advantage of an investment opportunity rather than being impelled by an improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments." 12 C.F.R. § 250.250(c). However, FSLIC's conflicts regulations currently preclude a thrift institution from following the above procedure without specific regulatory approval from FSLIC. Under section 402 of the bill, those regulations could remain in force as regulations of the Chairman of the Office of Savings Associations.

A. Revision of current regulations

This section requires COSA to revise the conflicts regulations so as not to prohibit a savings association that seeks to purchase mortgages from a mortgage-banking affiliate from following the above procedure for complying with section 23A. Revised regulations must take effect not later than six months after the bill becomes law.

B. Transitional period

While COSA is revising its regulations and for six months after the date on which COSA prescribes final revised regulations, a transitional rule will apply to any savings association that, before April 12, 1989, had received approval from FSLIC pursuant to section 408(d)(6) of the National Housing Act as then in effect to purchase mortgages from a mortgage banking affiliate. Such a savings association may continue to engage during that period in the transactions for which it had received regulatory approval. Instead of being subject to section 23A, those transactions will be subject to the standards applicable under section 408(d)(6) (e.g., by statute, regulation, interpretation, or order) before the bill became law.

If any regulatory approvals given by FSLIC lapse during the transitional period, COSA may extend them for the remainder of that period, using the standards applicable under section 408(d)(6) before the bill became law.

TITLE IV—DISSOLUTION AND TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SECTION 401. DISSOLUTION

Subsection (a) of this section dissolves the Federal Savings and Loan Insurance Corporation 60 days after the bill becomes law. Subsection (b) transfers to the FDIC or the Resolution Trust Corporation all of FSLIC's functions that are not transferred to the Chairman of the Office of Savings Associations under other provisions of the bill.

SECTION 402. CONTINUATION OF RULES

A. Continuation of Rules; Allocation of Authority.—Subsection (a) preserves in effect all of FSLIC's rules, regulations, and orders relating to insurance of accounts, administration of the insurance fund, or the conduct of conservatorships or receiverships except to the extent that the FDIC, after consulting COSA, determines otherwise. The FDIC or the Resolution Trust Corporation will enforce the rules, regulations, and orders that remain in effect. Subsection (b) preserves in effect all FSLIC rules, regulations, orders, and administrative actions not covered by subsection (a), and provides that they will be enforced by the FDIC unless they relate to a function transferred to COSA, in which case COSA will enforce them.

Subsection (c) requires the Chairman of the FDIC and the Chairman of the Office of Savings Associations, within 60 days after the bill becomes law, to publish in the Federal Register notice of which rules, regulations, and orders covered by subsection (a) or (b) have been allocated to which agency.

Subsection (d) contains a savings provision that preserves in effect all orders, determinations, rules, and regulations issued by FSLIC until modified or set aside by the FDIC or COSA.

B. FDIC's Authority to Prevent Risky Actions and Practices.—Subsection (e) authorizes the FDIC to promulgate and enforce rules, regulations, and orders to prevent actions or practices of State or Federal savings associations that pose a serious threat of loss to the pertinent deposit insurance fund.

SECTION 403. PERSONNEL

A. Identifying Bank Board and FSLIC employees for transfer

Subsection (a) requires the Chairman of the Office of Savings Associations and the Chairman of the FDIC to jointly determine (1) which Bank Board and FSLIC employees were engaged in functions or activities transferred under the Act to the FDIC; and (2) which of those employees so identified will be transferred to the FDIC. Those decisions must be free from discriminatory or other prohibited personnel practices.

B. Rights of employees identified for transfer

Subsection (b) enumerates the rights of employees who are identified for transfer to the FDIC:

(1) Employees who are identified for transfer to the FDIC will be offered an FDIC position of the same status as their former positions at the Bank Board or FSLIC.

(2) The Office of Personnel Management previously gave the Bank Board excepted-service appointing authority that allowed the Bank Board to hire up to 500 Schedule B employees without following normal competitive procedures. This section transfers that authority to the FDIC, allowing the FDIC to continue to employ those persons.

(3) Employees identified for transfer will be transferred to the FDIC within 60 days after the bill becomes law. After transfer, employees will be placed in a manner consistent with part 351 of title 5, Code of Federal Regulations. Transfers from the Bank Board or FSLIC to the FDIC will, for purposes of determining assignment rights, be treated as transfers of functions. If a reduction in force occurs, transferred employees will have assignment rights under OPM regulations. Transferred employees will receive notice of their assignment rights within 120 days after their transfers.

(4) For purposes of initial placement, the FDIC may place transferred employees into competitive areas separate from those existing at the FDIC. But once placement is completed, the competitive areas should be realigned to eliminate such separate competitive areas.

The FDIC may assign excepted-service employees to competitive-service positions, and employees so assigned will thereafter receive career or career-conditional appointments.

(5) Transferred Senior Executive Service employees will be placed in comparable executive positions at the FDIC.

(6) Transferred employees will receive notice of their position assignments within 120 days after their transfers.

(7) Transferred employees will retain their pay and grades under the principles of OPM regulations. Although the FDIC does not use the General Schedule, it does have a similar schedule. Transferred employees who become FDIC employees will receive the pay that would normally accompany their new FDIC grade.

(8) COSA will give any employee who is in a transferred function but who declines to be transferred severance pay consistent with OPM regulations promulgated under section 5595 of title 5, United States Code, except that severance pay shall in any case be at least 90 days pay. Such employees will also receive placement assistance, consistent with OPM regulations.

(9) Excepted-service employees, who do not otherwise qualify for placement assistance under OPM regulations, will nonetheless receive placement assistance for up to 120 days if they decline to be transferred.

(10) Employees who are asked to transfer and who decline an unreasonable offer of employment, as defined in OPM regulations, will receive severance pay and placement assistance. If such employees are otherwise eligible for early optional retirement, they will receive that as well. COSA will pay

severance pay and placement assistance, as well as early optional retirement to the extent that retirement benefits are not funded from contributions made before the transfer.

(11) If the FDIC decides to reorganize its combined work force within one year after the transfer of functions, the reorganization will be a major reorganization for purposes of offering early optional retirement.

(12) If COSA continues the Bank Board's employee-benefit programs, employees transferred to the FDIC may retain their membership in those programs until the end of the calendar year. COSA will pay any difference in cost between FDIC programs and the benefits allowed by this section.

(13) Transferred employees who constitute an appropriate unit for labor union representation will be subject to union certification and collective bargaining structures in place at the FDIC (rather than to those currently applicable at the Bank Board).

SECTION 404. DIVISION OF PROPERTY AND PERSONNEL

This section requires the Chairman of the Office of Savings Associations and the Chairman of the FDIC to divide all personnel and property of FSLIC between their agencies within 60 days after the bill becomes law. The Director of the Office of Management and Budget will settle any disputes.

SECTION 405. REPEALS

This section repeals sections 401-406, 407 (except subsection (m)), 411, and 415 of the National Housing Act. Section 302(a) of the bill also repeals sections 407(m), 408-414, and 416 of that Act. The bill does, however, preserve many provisions of those sections as parts of other statutes.

SECTION 406. REPORT

This section requires FSLIC to provide a final written report to Congress, the Treasury, and the Office of Management and Budget.

TITLE V—FINANCING FOR THRIFT RESOLUTIONS

SUBTITLE A—RESOLUTION TRUST CORPORATION

SECTION 501. RESOLUTION TRUST CORPORATION ESTABLISHED

A. Purposes and function of the RTC

This section adds a new section 21A to the Federal Home Loan Bank Act establishing the Resolution Trust Corporation ("RTC"), a mixed-ownership Government corporation. Neither the RTC nor its Oversight Board will constitute an "agency" or "executive agency" for purposes of title 5 of the United States Code.

The RTC's primary purposes are: (1) to resolve (e.g., as receiver or conservator) cases involving FSLIC-insured thrift institutions that entered receivership or conservatorship after January 1, 1989, but before the bill becomes law; (2) to act as receiver or conservator for FDIC-insured savings associations for which a receiver or liquidating conservator is appointed during the three years after the bill becomes law; (3) to manage and wind up the affairs of the Federal Asset Disposition Association ("FADA"); and (4) to conduct its operations so as to maximize recovery on assets it acquires, make efficient use of funds it obtains from the Funding Corporation, and minimize losses incurred in resolving cases.

In dealing with institutions in its custody, the RTC will exercise the FDIC's receivership and conservatorship powers. These include the power to liquidate an institution, operate it as a going concern, or facilitate its acquisition. This section also contemplates that the RTC will undertake obligations or assume liabilities only to the extent that it can fund them from the resources available to it under this section.

The RTC is to review assisted thrift acquisition approved by FSLIC after January 1, 1988, report to the Oversight Board the results of that review, and exercise all existing legal rights to modify, renegotiate, or restructure assistance agreements on which savings can be realized. Any gains or losses from exercising such rights would accrue to the RTC or the FSLIC Resolution Fund, as the RTC determines.

In carrying out its responsibilities, the RTC should rely on private-sector services to the extent that such services are available and their use is practicable and efficient. The RTC must, whenever possible, take participation interests in insured institutions or their holding companies, or in the assets of institutions liquidated or otherwise resolved by the RTC.

The RTC will exist for five years, after which its assets and liabilities will pass to the FSLIC Resolution Fund created under section 215 of the bill.

B. Oversight Board

The RTC will operate under the direction of an Oversight Board chaired by the Secretary of the Treasury, and including the Attorney General, the Chairman of the Federal Reserve Board, and two persons chosen by the President of the United States from the private sector who have substantial experience in managing large business organizations engaged in relevant business activities. The Oversight Board will review and have overall responsibility for the RTC's activities. The Oversight Board must approve or disapprove, in its discretion, any RTC regulation, policy, procedure, guideline, statement, contract, or other action.

The Oversight Board shall select the RTC's chief executive officer, and may delegate its responsibilities to the chief executive officer or other employees of the RTC. The RTC may hire employees without regard to the civil service requirements of title 5, U.S. Code. The Oversight Board may also employ its own staff, on the same terms of employment as apply to the RTC itself. The compensation of RTC employees must be consistent with that of FDIC employees.

C. Performance of RTC functions

The RTC will have both general corporate powers and certain special powers with which to perform its functions.

The RTC will rely upon the FDIC as its "primary manager" pursuant to an agreement between the RTC and the FDIC. The RTC may also contract with other parties. If the RTC is exercising the FDIC's powers as conservator or receiver, such contracts must accord with procedures applicable under the FDI Act. In all other cases, such contracts must be competitively bid.

D. Exemption from taxation

The RTC will be exempt from taxation, other than taxes on real property.

E. FSLIC liabilities

The RTC succeeds to the FSLIC's liabilities as guarantor of certain loans made by the Federal reserve banks and Federal home loan banks to insured savings associations before the bill becomes law. (This is the only liability of FSLIC that does not pass to the FSLIC Resolution Fund under section 215 of the bill.) The RTC must, within one year, repay any outstanding indebtedness not repaid by the savings associations in question.

F. Regulations and procedures

The RTC may issue regulations, but need not comply with the Administrative Procedure Act. Regulations or procedures adopted by the RTC relating to its exercise of the FDIC's rights and powers under the FDI Act must, however, accord with that Act and with the FDIC's regulations.

The RTC must adopt written procedures for selling or otherwise disposing of insured institutions and their assets, and must document its decisions and reasons. Those procedures must provide for adequate competition, and fair and consistent treatment of offerors, and minimize the cost to the RTC and the Government.

G. Funding

To carry out its functions, the RTC will receive the net proceeds of the Resolution Funding Corporation's issuance of up to $50 billion of obligations, as well as whatever cash its activities generate. The RTC may also borrow up to $5 billion from the Treasury. The RTC cannot obligate the FDIC or any of its insurance funds.

H. Reports

The RTC must make both annual and semiannual reports to Congress. Annual reports must include financial statements, as well as the RTC's financial operating plans and forecasts. Semiannual reports must contain the same types of information as annual reports, plus certain items important for Congressional oversight.

The Comptroller General must audit the RTC annually, unless the Comptroller General notifies the RTC at least 180 days before the end of the fiscal year that he will not perform the audit. If the Comptroller General gives such notice, the RTC must arrange to be audited by an independent certified public accountant. The Comptroller General will have access to all books and records of the RTC and its agents.

I. Asset disposal

The RTC must dispose of assets under its control so as to maximize the net present value of its return from those assets, minimize disruption to local markets, and provide the RTC with adequate capital. The RTC must document its decisions in order to demonstrate that it has followed plans and procedures consistent with those objectives.

The RTC must adopt special asset-disposition procedures to protect the economies of distressed areas. The RTC must set a minimum disposition price for real property that it owns before it sells that property. The procedures for setting that price, and the discretion granted to the chief executive officer or his designees to approve specific transactions for lesser amounts, are intended to protect against the dumping of assets while retaining the flexibility needed to make sound business decisions.

The RTC will establish regional advisory boards to bring local expertise to bear on the RTC's marketing, financial, and other strategic and policy decisions.

J. Standards of conduct for RTC employees

The RTC may either employ or contract with persons that will have responsibility for vast amounts of what are, in substance, Federal resources. To ensure that such persons act for the public good rather than for personal gain, the RTC must adopt conflict-of-interest and ethical standards at least as stringent as those applicable to FDIC em-

ployees. In addition, independent contractors and employees of the RTC will be subject to the same criminal sanctions as FDIC employees.

Subtitle B—Resolution Funding Corporation

SECTION 502. RESOLUTION FUNDING CORPORATION ESTABLISHED

A. Purpose

This section adds a new section 21B to the Federal Home Loan Bank Act, establishing the Resolution Funding Corporation ("REFCORP"). REFCORP will raise funds for the RTC by issuing debt to the public. The Federal home loan banks ("FHL Banks") must invest in REFCORP, which in turn must invest in the RTC. Under subsection (b) of new section 21B, the Chairman of the Office of Savings Associations must charter REFCORP within five days after the bill becomes law.

B. Management of the Funding Corporation

Subsection (c) of new section 21B establishes a Directorate to manage the Funding Corporation, subject to supervision by the RTC Oversight Board. The Directorate will consist of the Director of the Office of Finance of the FHL Bank System, or his successor, and two FHL Bank presidents selected by the Oversight Board. One of the two FHL Bank presidents will be appointed for an initial term of three years and the other for an initial term of two years. After the initial terms have expired, each succeeding appointment shall be for a three-year term. The president of a given FHL Bank may not be selected to serve if there are other FHL Banks whose presidents have served fewer terms. The Oversight Board will select a chairperson of the Directorate from among its three members.

C. Compensation and staff

Members of the Directorate will receive no compensation from REFCORP for serving on the Directorate. REFCORP will have no paid employees, but the Directorate may, with the Oversight Board's approval, use officers, employees, and agents of the FHL Banks to carry out REFCORP's functions.

The FHL Banks will pay all of REFCORP's administrative expenses, including custodian fees but excluding issuance and interest costs. Each FHL Bank will pay a pro-rata share of administrative expenses based on its required capital stock investment in REFCORP. "Issuance costs" and "custodian fees" are defined in subsection (k).

D. Powers of the Funding Corporation

Subsection (d) lists REFCORP's corporate powers, namely: (1) to issue nonvoting capital stock to the FHL Banks; (2) to purchase capital certificates issued by the RTC; (3) to issue debt; (4) to impose assessments on SAIF member institutions; (5) to adopt and use a corporate seal; (6) to have succession until dissolved; (7) to enter into contracts; (8) to sue and be sued; and (9) to exercise incidental powers necessary to carry out section 21B.

E. Regulation by the Oversight Board

REFCORP's Directorate will be subject to the regulations, orders, and directions of the RTC Oversight Board.

F. Capitalization of the Funding Corporation

Subsection (e) requires the FHL Banks to invest in REFCORP's nonvoting capital stock as prescribed by the Oversight Board, up to a maximum of $2,995.8 million, less amounts required to be invested after December 31, 1988, in the Financing Corporation (created under the Competitive Equality Banking Act of 1987). The stock issued by REFCORP to the FHL Banks will have a par value determined by the Oversight Board. The stock will be transferable only among the FHL Banks as prescribed by the Oversight Board, at not less than par value.

Paragraph (3) of subsection (e) limits the cumulative investment by any individual FHL Bank in REFCORP capitalization to the sum of the following:

(1) the Bank's legal reserves and undividend profits on December 31, 1988, minus (a) the Bank's investments in the capital stock of the Financing Corporation and (b) reserves required by COSA to be set aside for certain administrative obligations; plus

(2) the cumulative amount, after December 31, 1988, of additions to legal reserves and undivided profits, net of (a) funds invested in the Financing Corporation after that date, (b) reserves required by COSA to be maintained for certain administrative purposes; and

(3) additional amounts, as necessary, determined by allocating any amount by which the amounts under item (2) above for all FHL Banks fall short of $300,000,000 per year.

If the FHL Banks' total investment under this test would be less than $300 million in a given year, an additional investment will be required (allocated among the FHL Banks under subsection (e)(5)) so that the total investment of all FHL Banks will be at least $300 million.

Paragraph (8) defines "undivided profits" as retained earnings less (1) legal reserves, and (2) amounts held in the dividend stabilization reserves account on December 31, 1985. "Legal reserves" means the amount each FHL Bank must carry in a reserve account pursuant to the first two sentences of section 16(a) of the Federal Home Loan Bank Act.

G. Allocation of stock purchases Among FHL banks

Paragraphs (4) and (5) of new section 21B(e) describe the pro-rata distribution among the FHL Banks of purchases of Financing Corporation and REFCORP stock. Each FHL Bank must purchase a specified percentage of the first $1 billion of the combined stock issues of the REFCORP and the Financing Corporation. These percentages are the same as those currently in effect for allocating new issues of Financing Corporation stock.

Once the first $1 billion in stock has been purchased, paragraph (5) requires the RTC Oversight Board to allocate the FHL Banks' purchases of REFCORP stock according to the following formula: each FHL Bank's share equals the ratio arrived at by dividing the total assets of the Bank's SAIF-insured members by the total assets of all SAIF-insured members of all FHL Banks. Calculations for 1989 will, if necessary, be made by applying that same formula to the assets of all member insitutions that would have been SAIF-insured had the bill been in effect on December 31, 1988.

Paragraph (6) sets forth procedures for temporarily reallocating stock-purchase requirements when the amount a FHL Bank must purchase exceeds its investment limit.

J. Additional sources of funds for the Funding Corporation

Proceeds from the sale of REFCORP stock must be placed in the Funding Corporation Principal Fund. If each FHL Bank has reached its capital-stock investment limit and the Principal Fund needs additional amounts to defease REFCORP obligations, paragraph (7) sets forth the process and the order in which REFCORP will resort to other sources of funds. First, REFCORP, with the approval of the FDIC Board, will impose an assessment on each SAIF member in the same manner and under the same restrictions as FDIC insurance assessments. Any such assessments will count (dollar for dollar) against the statutory limits on SAIF assessments, and may thus reduce SAIF's assessment income. Second, if REFCORP still needs additional funds, the FDIC will transfer the necessary funds to REFCORP from the receivership proceeds of the FSLIC Resolution Fund.

I. Obligations of the Funding Corporation

Subsection (f) authorizes REFCORP, subject to the direction of the RTC, to issue up to $50 billion in debt obligations. REFCORP will pay the interest due (and any redemption premium) on those obligations from the following sources: (1) the net proceeds received by the RTC from liquidating institutions managed by the RTC, to the extent that the Oversight Board determines that those proceeds exceed the funds necessary for resolution costs; and (2) proceeds from warrants and participations acquired by the RTC.

If those funds do not cover the interest due on REFCORP obligations during a given year, the FHL Banks will jointly pay REFCORP $300 million minus whatever amounts the FHL Banks have paid (or should have paid) the Financing Corporation or REFCORP to purchase REFCORP stock. Individual FHL Banks' shares of those annual payments will be determined under a formula based on each FHL Bank's net earnings and share of the total advances made by all FHL Banks to SAIF members.

When the RTC is dissolved, its net assets will also be transferred to REFCORP to be used for interest payments.

If the Directorate determines, with the approval of the Secretary of the Treasury, that REFCORP cannot pay the interest due on its obligations from the sources described above, the Treasury will pay REFCORP whatever additional amounts REFCORP needs to make its interest payments. Any such Treasury payment will become a liability of REFCORP to be repaid to the Treasury once REFCORP is dissolved, to the extent that REFCORP has any remaining assets. Subsection (f) appropriates to the Secretary of the Treasury whatever amounts he will need to carry out that duty in fiscal year 1989 and thereafter.

When obligations issued by REFCORP under subsection (f) mature, they will be repaid by liquidating non-interest-bearing instruments held by the Funding Corporation Principal Fund.

J. Funding Corporation obligations, investments, and assets

The net proceeds of REFCORP obligations will be used to buy capital certificates issued by the RTC or to repay earlier obligations whose proceeds were invested in such capital certificates.

REFCORP obligations are made lawful investments for all federally administered fiduciary, trust, and public funds.

All persons authorized to deal in various ways in FHL Bank obligations may deal similarly in REFCORP obligations.

REFCORP obligations will have the same tax status as FHL Bank obligations. Thus, for example, interest earned on REFCORP

obligations will be subject to Federal income tax but not to State or local income taxes.

REFCORP obligations will be "exempt securities" under the Federal securities laws administered by the Securities and Exchange Commission.

The Oversight Board and the Directorate must ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsel have opportunities to participate significantly in any public or negotiated offerings of REFCORP obligations issued under section 21B.

REFCORP's obligations will be neither obligations of, nor guaranteed as to principal by, the Federal Home Loan Bank System, the FHL Banks, the United States, or the RTC. The Secretary of the Treasury will pay interest on REFCORP obligations as required by subsection (f).

Under new subsection (g), any assets that REFCORP is not required to invest in the RTC or apply to current interest payments will—subject to regulations, restrictions, and limitations prescribed by the RTC Oversight Board—be invested in Treasury securities, mortgage-related securities, or any other securities lawful for fiduciary and trust funds under the laws of any State. Earnings on those assets must be applied to interest due on REFCORP obligations before the sources described in subsection (f).

K. Funding Corporation principal fund

Subsection (g) further requires that funds received by REFCORP from sources specified in subsection (e) be invested in non-interest-bearing instruments such as Treasury STRIPS. REFCORP must hold those investments in a segregated account, the "Funding Corporation Principal Fund," to ensure repayment of the principal of those obligations. The total principal payable when the assets in that account mature will approximately equal REFCORP's debt principal. REFCORP may lend assets in the segregated account (with adequate collateral) to primary dealers in Treasury securities to facilitate market liquidity.

L. Miscellaneous provisions

Paragraph (1) of new subsection (h) gives REFCORP the same tax status as the FHL Banks have under section 13 of the Federal Home Loan Bank Act. It also authorizes the Secretary of the Treasury to prepare the necessary forms of stocks, bonds, and other obligations, as approved by the Oversight Board, to be issued by the REFCORP.

Paragraph (2) permits the Federal Reserve banks to act as REFCORP depositories, fiscal agents, or custodians.

Paragraph (3) makes REFCORP a mixed-ownership Government corporation for purposes of certain sections of the Government Corporations Control Act. Thus REFCORP is subject to audit by the General Accounting Office, and REFCORP's accounts can be kept by the Secretary of the Treasury, a Federal reserve bank, or any bank designated as a depository or fiscal agent of the U.S. Government. The Secretary of the Treasury will prescribe the terms of REFCORP's obligations (including the form, denomination, maturity, and interest rate), the time and manner of issuance, and the price for which the obligations will be sold. REFCORP needs the Secretary's approval to buy or sell more than $100,000 of any direct obligation of the U.S. Government or any obligation on which the principal and interest are guaranteed by the Government (although the Secretary may waive this requirement).

Under paragraph (4), any civil action, suit, or proceeding to which REFCORP is a party will be deemed to arise under the laws of the United States. The U.S. District Court for the District of Columbia will have original jurisdiction over such cases. REFCORP may remove such cases from State court to the U.S. District Court for the District of Columbia without bond or security.

Paragraph (5) requires REFCORP to submit an annual report to the Senate, the House, and the President. The report will include audited financial statements prepared in accordance with generally accepted accounting principles, together with financial operating plans and forecasts (including estimates of actual spending, future spending, and actual and future noncash obligations that fully account for REFCORP's financial commitments, guarantees, and other contingent liabilities. REFCORP's financial statements must be audited annually by an independent certified public accountant.

New subsection (i) provides for REFCORP's termination and dissolution. REFCORP will dissolve as soon as practicable after all of its obligations have been retired. After REFCORP's dissolution, the RTC Oversight Board may exercise any of REFCORP's power in order to conclude REFCORP affairs. Upon REFCORP's dissolution, the Treasury will receive any remaining REFCORP funds up to the amount it provided REFCORP over the years, with interest. If any REFCORP funds remain after the Treasury is fully repaid, they will be paid to the FHL Banks to retire the capital stock.

New subsection (j) permits the Oversight Board to prescribe regulations necessary to carry out section 21B.

New subsection (k) defines certain terms used in new section 21B. Paragraph (2) defines "Oversight Board" as the Oversight Board of the RTC—and, after termination of the RTC, the Secretary of the Treasury, together with the Chairman of the Federal Reserve Board and the Attorney General of the United States. Paragraph (4) defines "issuance costs" as issuance fees and commissions incurred by REFCORP in issuing or servicing its obligations. Those costs include legal and accounting expenses, trustee and fiscal paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses to the extent those costs are incurred by REFCORP in connection with issuing any obligation. Paragraph (5) defines "custodian fees" as fees incurred by REFCORP in transferring securities to or holding them in the Funding Corporation Principal Fund, and other expenses associated with establishing and maintaining that fund.

SECTION 503. FINANCING CORPORATION

This section amends section 21 of the Federal Home Loan Bank Act, which established the Financing Corporation. Paragraphs (1) through (7) of this section make technical amendments to section 21, primarily to permit the Financing Corporation to buy capital certificates issued by the FSLIC Resolution Fund (the "Fund"), if necessary. Those certificates will not pay dividends. When the FSLIC Resolution Fund terminates, the Fund's liability for the certificates will be subordinate to any Fund liability to the Treasury.

This section replaces section 21(f) of the Act, which currently authorizes the Financing Corporation to impose assessments on FSLIC-insured institutions to obtain money to pay interest on Financing Corporation obligations. New subsection (f) specifies three sources of funds for such interest payments. First, such payments can be made out of funds raised through Financing Corporation assessments levied on insured institutions before the bill becomes law.

Second, the Financing Corporation, with the FDIC's approval, may assess each SAIF member as if it were the FDIC acting under section 7 of the Federal Deposit Insurance Act. The amount assessed by the Financing Corporation plus the amount assessed by REFCORP under section 21B of the Federal Home Loan Bank Act may not exceed the assessment amount authorized under section 7 of the Federal Deposit Insurance Act, but the Financing Corporation will have first priority to make such assessments. All assessments made by the Financing Corporation under section 21 and by REFCORP under section 21B will count (dollar for dollar) against the limits on SAIF assessments set forth in section 7 of the FDI Act.

Third, if funds available from the first two sources cannot cover the interest due on the Financing Corporation's obligations, the FDIC will transfer the required balance to the Financing Corporation from the receivership proceeds of the FSLIC Resolution Fund, if REFCORP does not need those funds for the Funding Corporation Principal Fund under section 21B.

This section also permits the Financing Corporation to lend zero-coupon securities held in a segregated account to primary dealers in Treasury securities. Finally, the section provides for the Financing Corporation to be dissolved on December 31, 2026, or when its obligations mature and are fully paid, whichever comes first.

SECTION 504. MIXED OWNERSHIP GOVERNMENT CORPORATION

This section adds REFCORP and the RTC to the list of mixed-ownership Government corporations under the Government Corporations Control Act.

SECTION 505. FEDERAL HOME LOAN BANK RESERVES

Section 16(a) of the Federal Home Loan Bank Act currently requires each FHL Bank to retain 20 percent of its net earnings as reserves. This section repeals that requirement, effective January 1, 1992. The directors of each FHL Bank may then independently determine what percentage of the Bank's net earnings to retain as reserves. For purposes of section 16, "net earnings" will be computed without reduction for expenses incurred by an FHL Bank in connection with investments in REFCORP.

TITLE VI—THRIFT ACQUISITION ENHANCEMENT PROVISIONS

SECTION 601. ACQUISITION OF THRIFT INSTITUTIONS BY BANK HOLDING COMPANIES

A. Current law

A bank holding company may engage in a given nonbanking activity under section 4(c)(8) of the Bank Holding Company Act only if the Federal Reserve Board has determined that the activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has determined that the operation of a thrift institution is "closely related to banking" but is generally not a "proper incident thereto." *See, e.g., Citicorp*, 68 Fed. Res. Bull. 656 (1982). The Board has, however, permitted a bank holding company to operate a thrift institution if that institution had failed or was failing when the bank holding company acquired it. *See, e.g., id.* In approving such acquisitions, the Board has imposed certain limits

on transactions between the thrift institution and other subsidiaries of the holding company, such as prohibiting the thrift institution from being "operated in tandem" with the other subsidiaries, and prohibiting the other subsidiaries from linking their deposit-taking activities to accounts at the thrift institution (e.g., through a sweep arrangement). *Id* at 659.

B. Discretion to approve acquisitions under section 4(c)(8)

This section of the bill specifically authorizes the Federal Reserve Board to permit a bank holding company to acquire a savings association pursuant to section 4(c)(8) of the Bank Holding Company Act, as described below.

1. Acquiring undercapitalized savings associations during the two years after the bill becomes law.—During the first two years after the bill becomes law, the Board may permit a bank holding company to acquire any savings association (1) that does not meet the capital standards prescribed by the Chairman of the Office of Savings Associations, or (2) whose tier 1 capital (as defined in COSA's risk-based capital regulations), excluding any goodwill, is less than 2 percent of the savings association's risk-adjusted assets.

2. Acquiring any savings association after that two-year period.—Beginning two years after the bill becomes law, the Board may permit a bank holding company to acquire *any* savings association.

C. Restrictions on transactions between the savings association and its affiliates

Effective immediately upon enactment, the Board may not impose restrictions on transactions between the savings association and its holding company affiliates except as required under sections 23A and 23B of the Federal Reserve Act or other applicable statutes. In addition, any orders issued before enactment must be modified to the extent that they contain restrictions not permissible under the preceding sentence.

D. Subsidiary savings association is fully subject to section 4(c)(8)

This section in no way permits a savings association subsidiary of a bank holding company to engage, directly or indirectly, in any activity not permissible under section 4(c)(8). On the contrary, any acquisition of a savings association pursuant to this section must be made under section 4(c)(8), subject to all of the requirements, limitations, and procedures applicable under section 4.

SECTION 602. INVESTMENTS BY SAVINGS AND LOAN HOLDING COMPANIES IN UNAFFILIATED THRIFT INSTITUTIONS

A. General rule

Section 408(e)(1)(A)(iii) of the National Housing Act (which the bill reenacts as section 10(e)(1)(A)(ii) of the Home Owners' Loan Act) prohibits a savings and loan holding company from acquiring any voting shares of a federally insured thrift institution—or a savings and loan holding company—that is not a subsidiary of the would-be acquirer. Thus a savings and loan holding company may not currently acquire voting shares of another savings and loan holding company or of a federally insured thrift institution unless it has, or is acquiring, control of that holding company or thrift institution.

This section permits a savings and loan holding company to acquire up to 5 percent of the outstanding voting shares of a savings association or a savings and loan holding company, even if the acquirer does not control the savings association or holding company that is the issuer of the shares.

Bank holding companies already have similar authority under section 4(c)(6) of the Bank Holding Company Act.

B. Exceptions

In determining compliance with the 5-percent limit described above, shares of a savings association or savings and loan holding company are not counted if they fall within the following seven categories:

(1) shares held as a bona fide fiduciary, with or without the sole discretion to vote the shares;

(2) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) shares held in an account solely for trading purposes (i.e., as a market-maker);

(4) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(5) shares acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition (subject to extension by the Chairman of the Office of Savings Associations);

(6) shares acquired under section 13(k) of the Federal Deposit Insurance Act, which authorizes emergency acquistions of failed or failing savings associations; and

(7) shares held by insurance company subsidiaries of the parent holding company, so long as all shares held by such insurance companies pursuant to this exception do not in the aggregate exceed 1 percent of any class of shares of a given bank or thrift institution.

These exceptions are identical to certain provisions of section 4(f)(2)(A)(ii) of the Bank Holding Company Act, as amended by section 1414 of the bill, Thus, for example, exception (1), like the basic fiduciary exception in new section 4(f)(2)(A)(ii)(I), focuses on whether a holder of shares *acts* as a fiduciary rather than merely has the status of a fiduciary. Exception (5), like new section 4(f)(2)(A)(ii)(VI), is modeled on section 2(a)(5)(D) of the Bank Holding Company Act. The 1-percent limitation in exception (7), like that in new section 4(f)(2)(A)(ii)(VIII), prevents the exception from becoming an open-ended loophole under which the 5-percent restriction could be evaded merely by holding shares through one or more insurance companies.

SECTION 603. TECHNICAL AMENDMENT TO THE BANK HOLDING COMPANY ACT

The Bank Holding Company Act currently uses the term "insured institution" to refer to a federally insured thrift institution, and section 2(j) of that Act incorporates by reference the definition of "insured institution" in section 408(a)(1) of the National Housing Act.

This bill repeals section 408, and generally refers to thrift institutions as "savings associations." Accordingly, this section amends section 2(j) so as to encompass "savings associations," and to incorporate by reference the definition of "savings associations" in section 10(a)(1)(A) of the Home Owners' Loan Act.

TITLE VII—FEDERAL HOME LOAN BANK SYSTEM REFORMS

Subtitle A—Federal Home Loan Bank Act Amendments

SECTION 701. DEFINITIONS

This section amends section 2 of the Federal Home Loan Bank Act by replacing "Federal Loan Bank Board" with "Federal Home Loan Bank Agency," replacing "Board" with "Agency," and making conforming changes.

SECTION 702. FEDERAL HOME LOAN BANK AGENCY

Under section 17 of the Federal Home Loan Bank Act, the Federal home loan banks ("FHL Banks") are currently supervised and regulated by the Federal Home Loan Bank Board, which will be abolished under section 301 of the bill. This section amends section 17 to replace the Bank Board as supervisor and regulator of the FHL Banks with a new Federal Loan Bank Agency (the "Agency"). (Title III of the bill transfers the Bank Board's authority to regulate savings associations to a new Office of Savings Associations in the Department of the Treasury.)

The Federal Home Loan Bank Agency will be governed by a three-member board of directors, whose members will be appointed by the President for six-year terms, subject to confirmation by the Senate. Each person appointed as a director must have extensive experience or training in housing finance, as well as a commitment to the provision of specialized housing credit. No more than two directors may be from the same political party. No director may hold any other appointive office during his or her term.

The Agency may set the compensation of its employees without being bound by U.S. Government pay constraints. However, to avoid a bidding war to attract employees from one agency to another, the Agency must consult with the Federal banking agencies in setting its employees' compensation, and that compensation must be comparable to that paid by the banking agencies.

The Agency's employees will not be officers or employees of the U.S. Government for purposes of title 5 of the U.S. Code. An agent of the Agency will, however, be an employee of the Government for purposes of section 2671 of title 28, which relates to tort liability.

The Agency may not delegate any of its functions to any employee or administrative unit of any FHL Bank.

All of the Agency's expenses, including the salaries of its employees and its board of directors, are to be paid from assessments levied on the FHL Banks. Those funds will not be treated as Government funds or appropriated monies, nor will they be subject to apportionment under title 31.

No member of the Agency's board of directors may have any direct or indirect financial interest in any institution that is a member of an FHL Bank.

The Agency may, for cause, suspend or remove any director, officer, or employee of an FHL Bank. The Agency must give the affected party written notice of the cause for the suspension or removal.

The Agency must report annually to Congress. Its reports should detail the operations of the Agency and the FHL Banks, and evaluate the Federal Home Loan Bank System's effectiveness in safely promoting affordable home financing, raising funds in the capital markets, and maintaining adequate capital.

SECTION 703. SHAREHOLDER ELIGIBILITY REQUIREMENTS

Section 4(a) of the Federal Home Loan Bank Act currently allows only thrift institutions and insurance companies to become members of a Federal home loan bank. Section 27 of that Act prohibits national banks from subscribing for stock of an FHL Bank.

This section repeals section 27, and amends section 4(a) to permit any federally insured bank or credit union to become a member of an FHL Bank, if the bank or credit union meets the qualified thrift lender test (sections 301 and 303 of the bill; also discussed below in connection with section 712). Any institution that is not a member of an FHL Bank on January 1, 1989, may become a member only if it meets the QTL test. The Agency may deny an application for membership if, in the Agency's judgment: (1) advances could not be safely made to the applicant; or (2) the applicant's management or home-financing policy is inconsistent with sound and economical home financing or with the purposes of the Federal Home Loan Bank Act.

SECTION 704. CAPITAL STOCK

This section deletes subsections (a), (e), (f), and (g) of section 6 of the Federal Home Loan Bank Act. These obsolete subsections governed the original issuance of FHL Bank stock, subscription for that stock by the Secretary of the Treasury, repurchase of stock held by the Treasury, and advances by the FHL Banks to State thrift institutions that were prohibited by State law from purchasing FHL Bank stock. This section of the bill also amends section 6(i) of the Act (redesignated as subsection 6(e)) to require any member that withdraws from, or is deprived of, membership in an FHL Bank to repay all advances and pay a prepayment fee.

SECTION 705. ELECTION OF BANK DIRECTORS

This section amends section 7 of the Federal Home Loan Bank Act to require that two of the directors appointed by the Agency to serve on the board of each FHL Bank be selected based on their qualifications as representatives of consumers or persons of moderate income.

This section authorizes each FHL Bank to determine the conditions under which it may indemnify its directors and officers.

If a member institution does not meet all applicable capital standards, this section also prohibits any officer or director of that institution from serving as a director of an FHL Bank. Thus, for example, if a member institution ceases to meet any applicable capital standard, any officer or director of the institution must immediately resign from the FHL Bank's board of directors, even if the institution met all applicable capital standards when he or she was elected.

SECTION 706. STUDIES

This section replaces obsolete section 8 of the Federal Home Loan Bank Act (authorizing certain studies of State law) with a new section 8 authorizing the Agency or the FHL Banks to study trends in home and property values, methods of appraisal, and other relevant subjects.

SECTION 707. ELIGIBILITY OF BORROWERS TO OBTAIN ADVANCES

This section deletes from the Federal Home Loan Bank Act all references to nonmember borrowers. Any borrower from an FHL Bank must henceforth own stock in that FHL Bank.

SECTION 708. FEDERAL HOME LOAN BANK LENDING

This section amends section 11(k) of the Federal Home Loan Bank Act to authorize the FHL Banks to make loans to the FDIC for use by the Savings Association Insurance Fund, as directed by the FDIC. The interest rate on such a loan must be no less than the FHL Banks' current marginal cost of funds, taking into account the maturity involved. These loans must have COSA's concurrence and must be secured to COSA's satisfaction.

SECTION 709. FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

This section repeals section 8a of the Federal Home Loan Bank Act, thereby abolishing the Federal Savings and Loan Advisory Council.

SECTION 710. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE

This section repeals section 21(i) of the Federal Home Loan Bank Act, therby abolishing the Federal Savings and Loan Insurance Corporation Industry Advisory Committee.

SECTION 711. RATE OF INTEREST

This section repeals section 5B of the Federal Home Loan Bank Act, which currently authorizes the Bank Board to regulate the payment and advertisement of interest paid to depositors by FSLIC-insured institutions. The authority to regulate interest rates is being transferred to COSA.

SECTION 712. ADVANCES

A. Advances must be fully secured by eligible collateral

Subsection (a) of this section amends section 10(a) of the Federal Home Loan Bank Act to specify that any advance or other extension of credit by an FHL Bank must be fully secured by one or more of the following: (1) fully disbursed home mortgage loans; (2) securities issued or guaranteed by the U.S. Government, or mortgage-backed securities issued or guaranteed by Freddie Mac, the Federal National Mortgage Association, or the Government National Mortgage Association; (3) deposits of an FHL Bank; or (4) real-estate-related collateral which has a readily ascertainable value and in which which the FHL Bank can perfect its security interest, so long as all such loans do not exceed 30 percent of the borrower's capital. However, this requirement does not limit an FHL Bank's authority to protect its security position on outstanding loans (e.g., by requiring additional collateral of any type). Long-term advances may be made *only* to provide funds for housing finance.

B. Special requirements for borrowers not in compliance with OTL test

Subsection (b) of this section amends section 10(e) of the Federal Home Loan Bank Act, dealing with advances to current members that fail the qualified thrift lender test. Under sections 301 and 303 of the bill, a member savings association that ceases to be a qualified thrift lender has three years in which to become a bank. After the three-year period, it may not obtain advances and must repay any outstanding advances. This section governs advances to such a savings association during the three-year transitional period. The savings association may obtain advances only if it purchases and holds stock in its FHL Bank in the amounts that would be required if it had 60 percent of its assets in home mortgage loans. A member seeking advances pursuant to amended section 10(e) would still have to satisfy additional requirements set forth in the Federal Home Loan Bank Act, the Home Owners Loan Act, Agency regulations, and the FHL Bank's credit program.

SECTION 713. EXAMINATIONS

This section amends section 20 of the Federal Home Loan Bank Act to require periodic examinations of the FHL Banks by the Comptroller General. These examinations shall focus on the effectiveness of the FHL Banks and the Agency in fulfilling the purposes of the Federal Home Loan Bank Act.

SECTION 714. CONFORMING FEDERAL HOME LOAN BANK ACT AMENDMENTS

This section makes certain conforming amendments to the Federal Home Loan Bank Act and other statutes in keeping with section 702 of the bill, under which the Agency will be funded by assessments levied on the FHL Banks. This section also makes certain other conforming amendments.

SECTION 715. LIQUIDITY

This section repeals section 5A of the Federal Home Loan Bank Act, relating to liquidity requirements. Section 301 of the bill re-enacts the substance of section 5A as section 4A of the Home Owner's Loan Act, but with liquidity requirements administered by the Chairman of the Office of Savings Associations rather than by the Bank Board.

SECTION 716. TRANSFERS

Under this section, FHL Bank employees who currently supervise and regulate savings associations will be transferred to the Office of Savings Associations. The section also provides for other incidental personnel transfers as agreed between COSA and the Agency.

Subtitle B—Conforming Amendments

SECTION 721. REPEAL OF LIMITATION OF OBLIGATION FOR ADMINISTRATIVE EXPENSES

This section deletes obsolete references to the Federal Home Loan Bank System, the Home Owners' Loan Corporation, and FSLIC in section 7(b) of the First Deficiency Appropriation Act of 1936.

SECTION 722. AMENDMENT OF ADDITIONAL POWERS OF CHAIRMAN

This section amends section 502(c) of the Housing Act of 1948 to give COSA the current authority of the Bank Board and FSLIC to contract with and otherwise utilize certain public and private resources in carrying out his duties.

SECTION 723. AMENDMENT OF EXECUTIVE SCHEDULE

This section specifies the compensation for certain newly-created positions by adding the Chairman of the Office of Savings Associations and the President of the Federal Home Loan Bank Agency to Level III of the Executive Schedule, and by adding the Agency's directors to Level IV of that schedule.

SECTION 724. AMENDMENT OF TITLE 31, UNITED STATES CODE

This section provides that the Office of Savings Associations is subject to the general oversight of the Secretary of the Treasury.

SECTION 725. AMENDMENT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT

This section amends the Balanced Budget and Emergency Deficit Control Act of 1985 to exempt from sequestration the Office of Savings Associations, the FSLIC Resolution Fund, the RTC, the insurance funds administered by the FDIC, and payments to the Resolution Funding Corporation—just as the Bank Board and FSLIC are currently treated.

TITLE VIII—BANK CONSERVATION ACT AMENDMENTS

The Bank Conservation Act authorizes the Comptroller of the Currency to appoint a conservator for a national bank or a District of Columbia bank or trust company supervised by the Comptroller, if the Comp-

troller determines such action is necessary to conserve the bank's assets for depositors and other creditors. The Act was enacted in 1933 and has never been amended. The Comptroller has rarely invoked the Act since the Great Depression because of certain rigid constraints in the Act, such as a provision making the conservator's compensation subject to the Government pay scale, and an unwieldy requirement that new deposits be segregated from old deposits.

SECTION 801. DEFINITIONS

This section amends the Bank Conservation Act's definition of "bank" to include a Federal branch of a foreign bank, and any other federally chartered or licensed institution supervised by the Comptroller of the Currency.

SECTION 802. APPOINTMENT OF CONSERVATOR

A. Grounds for appointment

This section amends section 203 of the Bank Conservation Act. New subsection (a) of section 203 clarifies the grounds for the comptroller to appoint a conservator for a financial institution. Most of these grounds resemble the grounds for appointment of a conservator for a Federal savings association under section 5(d)(2) of the Home Owners' Loan Act.

B. Judicial review

New subsection (b) provides for judicial review of the Comptroller's appointment of a conservator. The appointment may be set aside only if the court finds it to be arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. Like section 5(d)(2) of the Home Owners' Loan Act, subsection (b) is intended to limit judicial interference in the conduct of conservatorships.

Subsection (b) also requires the court to stay for up to 90 days judicial proceedings to which the conservator or the bank is or may become a party, upon petition by the Comptroller.

New subsection (c) gives the Comptroller additional power to appoint a conservator if a majority of a bank's directors consent to the appointment, or if the FDIC terminates the bank's deposit insurance.

New subsection (d) makes exclusive the Comptroller's power to appoint conservators for banks, and permits the Comptroller to appoint as conservator the FDIC or any other person. The Comptroller may not appoint a conservator to liquidate or wind up the affairs of a bank (except insofar as section 804 of the bill permits a sale of voluntary liquidation).

New subsection (e) permits the Comptroller to replace a conservator at any time, without notice or hearing.

SECTION 803. EXAMINATIONS

This section authorizes the Comptroller, in carrying out his supervisory responsibilities, to use reports made by the FDIC as conservator. The Comptroller will continue to supervise national banks in conservatorship that are operated as going concerns.

SECTION 804. TERMINATION OF CONSERVATORSHIP

This section further defines the circumstances in which a conservatorship may be terminated. A conservatorship may be terminated when the Comptroller (together with the FDIC, when the FDIC is the conservator) believes termination is safe and in the public interest. Termination may occur (1) when the bank resumes business on terms prescribed by the Comptroller; (2) upon the sale, merger, consolidation, purchase and assumption, change in control, or voluntary liquidation of the bank; or (3) if the Comptroller declares the bank insolvent and places it in receivership.

If, on termination of a conservatorship, a bank resumes normal operations on terms imposed by the Comptroller, those terms will constitute an enforceable order, subject to judicial review. If a conservatorship terminates through a sale, change in control, or the like, any net proceeds of the transaction must be distributed to interested claimants, including shareholders, according to a specified notice and claims procedure.

SECITON 805. CONSERVATOR; POWERS AND DUTIES

This section amends section 206 of the Bank Conservation Act to clarify the scope of a conservator's management powers over the bank in conservatorship. These powers resemble those of a conservator for an insured savings association. Except as the Comptroller may otherwise provide by rule, regulation, or order, a conservator has the same rights and duties and is subject to the same penalties and requirements as apply to the directors, officers, or employees of the bank whose authority the conservator exercises.

The Comptroller may permit the conservator and persons retained to assist the conservator to be paid at rates exceeding Federal salary rates.

The Comptroller may direct the conservator to set aside funds to assure payment of depositors and other creditors.

This section preserves current law regarding the payment of conservatorship expenses from the bank's assets.

SECTION 806. LIABILITY PROTECTION

This section restates the limitations on the conservator's liability to third parties. The Federal Tort Claims Act governs if the conservator is a Federal agency or employee. In all other cases, the conservator is liable only for bad faith or gross negligence. The Comptroller may indemnify a conservator.

SECTION 807. RULES AND REGULATIONS

Under this section, regulations issued by the Comptroller must, insofar as they apply to cases in which the FDIC is conservator, must be consistent with the FDIC's regulations under the FDI Act.

SECTION 808. REPEALS

This section repeals sections 207 and 208 of the Bank Conservation Act. Section 207 currently permits a bank reorganization—which must be approved by depositors and other creditors, or stockholders, or both—to become effective only pursuant to a plan approved by the Comptroller and a supermajority of the interested parties. The repeal of section 207 will not impede the reorganization of banks in conservatorship. The conservator's power under section 206 (section 805 of the bill) to act for a bank's shareholders will greatly facilitate a reorganization. When the FDIC acts as conservator, it also has broad reorganization powers under section 11 of the FDI Act.

The repeal of current section 208 of the Bank Conservation Act, coupled with the amendment of section 206, removes the onerous requirement that new deposits be segregated from old deposits to prevent new deposits from being used to satisfy old deposit liabilities and to assure full payment on new deposits accepted during the conservatorship.

SECTION 809. CONFORMING AMENDMENT

This section adds conservators appointed under the Bank Conservation Act to the list of persons whom the Comptroller of the Currency may appoint without regard to section 5373 of title 5, United States Code, which (but for section 1404 of the bill) would prohibit the Comptroller from setting the compensation of a position or employee at more than the maximum rate for level V of the Executive Schedule.

TITLE IX—ENFORCEMENT AUTHORITY IMPROVEMENTS

SECTION 902. SHORT TITLE

This section designates this title as the "Enforcement Authority Improvements Act of 1989."

Subtitle A—Regulation of Financial Institutions

SECTION 911. CHANGE IN TERMINOLOGY

The enforcement provisions currently use inconsistent terminology to define the scope of the Federal banking agencies' enforcement authority. For example, cease-and-desist orders may be issued against any "director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured bank." Removal orders, on the other hand, may be issued only against directors or officers.

This section deletes the various terms used to describe the parties covered by the enforcement provisions and substitutes the new term "institution-related party." The term is defined (in section 3 of the Federal Deposit Insurance Act, as amended by section 204 of the bill) to include any director, officer, employee, agent, or other person participating in the conduct of the affairs of an insured bank or a subsidiary of an insured bank; any person who has filed or should have filed a change-in-control notice with the appropriate Federal banking agency; and any controlling shareholder. It also includes an "independent contractor," such an attorney, accountant, or appraiser, who knowingly or recklessly participates in a wrongful action that had or is likely to have an adverse effect on an insured institution. The additional requirement of knowing or reckless participation in a wrongful action applies only to an independent contractor who does not otherwise participate in a financial institution's affairs. Thus, for example, an attorney who is a director of a bank would automatically be an "institution-related party" even though the attorney may not knowingly or recklessly participate in a wrongful act.

SECTION 912. PERIODS APPLICABLE TO INSURANCE TERMINATION

Under current law, the FDIC may initiate a proceeding to terminate an insured bank's deposit insurance if the FDIC determines that the bank is engaging in an unsafe or unsound practice; is in an unsafe or unsound condition; or has violated any law, regulation, or condition imposed in writing in connection with the granting of an application or other request. First, the FDIC must give a statement of the problem to the bank and its primary Federal regulator (and in the case of a State bank, the State regulator). The bank must then correct the probem within 120 days, or such shorter period not less than 20 days as the FDIC or the appropriate Federal agency may determine. If the bank does not correct the problem, the FDIC may give the bank 30 days notice of the FDIC's intent to terminate insurance. The bank is then entitled to an administrative hearing. Following the hearing, the FDIC may issue an order terminating the bank's insurance. Existing deposits at that bank will then remain insured for two

years, but new deposits will have no insurance.

This section of the bill reduces from 120 days to 60 days the maximum time an institution may take to correct violations. After insurance terminates, existing accounts will remain insured for at least six months and, at the FDIC's discretion, for up to two years.

SECTION 913. SUSPENSION OF INSURANCE

There is currently no procedure under which the FDIC may suspend insurance. This section adds a new section 8(a)(2) to the FDI Act, permitting the FDIC to issue a temporary order suspending deposit insurance on all deposits received by an insured institution. To issue such an order, the FDIC must find, after consultating with the appropriate Federal banking agency, that the financial institution has no tangible capital under the agency's capital standards. Such an order may take effect 10 days after service. Within the 10-day period, the institution may seek an injunction in U.S. district court. The court shall issue the injunction if it finds the FDIC's suspension order to be arbitrary or capricious.

A special rule applies for savings associations. Under that rule, the FDIC is to add goodwill to a savings association's tangible capital to the extent that such goodwill may be included in that savings association's capital under section 5(t) of the Home Owners' Loan Act. "Special supervisory associations" are those whose capital for purposes of section 8(a)(2) would be less than or equal to zero but for the inclusion of goodwill under the special rule.

The FDIC may suspend a special supervisory association's insurance if: (1) the association's capital suffers a material decline; (2) the association or any officer or director engages in any unsafe or unsound practice; (3) the association is in an unsafe or unsound condition; (4) the association or any officer or director violates any applicable law, rule, regulation, or order, or any condition imposed in writing; or (5) the association fails to enter into a capital-improvement plan within three months after the bill becomes law. The FDIC must examine every special supervisory association within three months after the bill becomes law and quarterly thereafter. Nothing in this section limits the right of the FDIC, as successor to FSLIC and the Bank Board, to enforce any contractual provision requiring a special supervisory association to amortize goodwill at a more rapid rate than would otherwise be required under Federal law or applicable accounting standards.

SECTION 914. RESTITUTION, REIMBURSEMENT, AND OTHER REMEDIES

A. Restitution, reimbursement, and indemnification

Section 8(b) of the Federal Deposit Insurance Act authorizes the Federal banking agencies to issue cease-and-desist orders, which may require an insured institution or its employees to "take affirmative action to correct the conditions resulting from any" violation. In *Larimore v. Comptroller of the Currency*, 789 F.2d 1244 (7th Cir. 1986), the court of appeals held that section 8(b) did not authorize the Comptroller to obtain reimbursement in an administrative proceeding from a director of a national bank who participated in a violation of the statutory lending limit.

The *Larimore* decision has created confusion about the Federal banking agencies' authority to order restitution, reimbursement, or other forms of indemnification. This section makes clear that the Comptroller as well as the other Federal banking agencies may order a party to make restitution to, reimburse, or otherwise indemnify an insured institution for losses resulting from violation of laws or other improper conduct. The banking agencies should use this power only in appropriate cases—for example, when the institution-related party has unjustly enriched himself at the institution's expense or has acted in reckless disregard of the banking laws or regulations. This power should not be used when the institution-related party has engaged in less serious violations or less serious conduct.

B. Restrictions on activities

This section also permits a permanent cease-and-desist order (1) to limit or restrict the activities or functions of a financial institution or any institution-related party in order to correct the conditions resulting from any violation or practice; and (2) to limit a financial institution's asset growth.

SECTION 915. APPLICABILITY OF SECTION 8

This section applies the banking agencies' basic enforcement statute, section 8 of the FDI Act, to savings and loan holding companies and their subsidiaries (other than a bank or any subsidiary of a bank) and to any subsidiary of a savings association. COSA will be the regulator, unless the savings and loan holding company is also a bank holding company, in which case both COSA and the Federal Reserve Board will be the regulator.

SECTION 916. TEMPORARY CEASE-AND-DESIST ORDERS

Current law permits a Federal banking agency to issue a temporary cease-and-desist order if it finds that a violation, a threatened violation, or a practice is likely to (1) make a bank insolvent, (2) lead to *substantial* dissipation of the bank's assets or earnings, (3) *seriously* weaken the bank's condition or (4) *seriously* prejudice the interests of the bank's depositors, before a regular cease-and-desist proceeding could be completed. This section deletes the terms "substantial" and "seriously" from the above requirements, and specifies that a temporary order may limit the activities or functions of a financial institution or any institution-related party. Such limits may include prohibitions on the institution's asset growth.

SECTION 917. TEMPORARY CEASE-AND-DESIST ORDERS RELATING TO BOOKS AND RECORDS

A Federal banking agency may issue a temporary cease-and-desist order whenever it determines that an insured financial institution's books or records are so incomplete or inaccurate that the agency cannot, through normal supervisory practice, determine the institution's financial condition or the details or purpose of any transaction that may adversely affect the institution's financial condition.

All temporary cease-and-desist orders are subject to judicial review under the "arbitrary and capricious" standard.

SECTION 918. REMOVAL ORDERS

Current law permits the Federal banking agencies to remove officers and directors of insured banks, but not other parties. Different removal provisions apply, depending upon whether the misconduct occurred at the bank that currently employs the individual (section 8(e)(1) of the FDI Act), or at another institution or business enterprise (section 8(e)(2)). These provisions essentially require a showing that: (1) the party has violated a law, rule, regulation, or cease-and-desist order, has engaged or participated in an unsafe or unsound practice, or has breached a fiduciary duty; and (2) the institution has suffered or will probably suffer *substantial* financial loss or could be *seriously* prejudiced because of that violation or practice, or the individual has received financial gain through that practice; and (3) the violation or practice involves personal dishonesty or demonstrates a willful or continuing disregard for the financial institution's safety and soundness.

The bill unifies the removal provisions to establish a single standard regardless of whether the misconduct occurs at the institution that currently employs the individual or at another institution. To be removed under the new standard:

(1) an institution-related party must have (a) violated a law, rule, regulation, final order, or written agreement with a Federal banking agency, (b) engaged in or participated in an unsafe or unsound practice, or (c) breached a fiduciary duty;

(2) (a) the institution must have suffered or be likely to suffer financial loss or prejudice to its depositors' interests, or (b) the party must have received financial gain through his or her violation, practice, or breach; and

(3) The party's conduct must have (a) involved personal dishonesty, or (b) demonstrated willful or continuing disregard for the safety and soundness of the institution.

The new removal provision will apply to all institution-related parties, not just officers and directors. An individual removed from one institution could not, without the prior consent of the agency that issued the removal order, become an institution-related party at any other federally insured depository institution. This section deletes the adjectives "seriously" and "substantial," highlighted above. Finally, it clarifies that actions taken either directly or indirectly by an institution-related party may be grounds for removal.

SECTION 919. TEMPORARY SUSPENSION ORDERS

Section 8(e)(4) of the FDI Act authorizes the Federal banking agencies to issue a temporary removal or suspension order if necessary for the protection of the bank or the interests of its depositors. This section of the bill makes certain conforming amendments to section 8(e)(4), allows those orders to be issued against all institution-related parties, and deletes certain obsolete terminology.

SECTION 920. EFFECT OF SUSPENSION OR REMOVAL

Section 8(j) of the FDI Act makes it a crime for an individual who is subject to a temporary or permanent suspension or removal order to vote for a director or serve as a director, officer, or employee of any bank, bank holding company, or Edge Act corporation without prior written approval from the appropriate Federal banking agency.

This section of the bill provides that a person removed or suspended from any one bank, bank holding company, subsidiary of a bank, or an Edge Act or Agreement corporation is also automatically removed or suspended from all other insured institutions, bank holding companies, savings and loan holding companies, farm credit banks, credit unions, and any subsidiaries of any insured financial institutions, unless the defendant has received prior written approval from the agency that issued the removal order. If the defendant is an employee of a business organization, such as an accounting firm or law partnership, the suspension or removal order will affect only the individual involved

unless the appropriate Federal regulatory agency specifies that it should apply to the employing company or firm.

SECTION 921. CIVIL MONEY PENALTIES

A. In general

Currently, civil money penalties generally may not exceed $1,000 per day. For violations of reporting requirements, penalties may not exceed $100 per day; for willful violations of the Change in Bank Control Act, $10,000 per day, with the defendant entitled to a full evidentiary trial in a U.S. district court before any penalty may be collected.

This section generally increases civil penalties to a maximum of $25,000 per day. If a violation is made with reckless disregard for the safety and soundness of the financial institution, the new maximum penalty will be $1 million per day. A civil money penalty may be imposed for violating any law, regulation, final order, or any condition imposed in writing in connection with the granting of any application or other request. In addition, a civil money penalty may be assessed for breaching any fiduciary duty if the breach results in a financial loss to the institution or pecuniary gain to the defendant. In determining penalty amounts, the agencies must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

B. Limitation on penalties for de minimis violations

Notwithstanding the general increase in maximum civil money penalties, this section limits civil money penalties for minor violations to $2,500 per day. The $2,500-per-day limit does not apply if the appropriate agency finds that the violation (1) caused or is likely to cause a serious financial loss to the institution or the insurance fund, (2) evidenced reckless disregard for the safety or soundness of the financial institution, (3) resulted from gross negligence, (4) was part of a pattern of violations, or (5) enriched the defendant.

SECTION 922. CRIMINAL PENALTIES FOR VIOLATION OF REMOVAL OR SUSPENSION ORDERS

Under current law, any person who participates in the affairs of the bank from which he has been removed or suspended, or who, without prior approval from the appropriate agency, votes for a director or serves or acts as a director, officer, or employee of any other bank, may be fined up to $5,000, imprisoned for up to one year, or both.

This section provides that any person subject to a suspension or removal order who participates in the affairs of *any* insured depository institution may be fined up to $1 million per day, imprisoned for up to five years, or both.

SECTION 923. DEFINITIONS

A. Appropriate Federal regulatory agency

"Appropriate Federal regulatory agency" is defined to include the appropriate Federal banking agency, the National Credit Union Administration Board (in the case of an insured credit union), and the Farm Credit Administration (in the case of institutions chartered under the Farm Credit Act).

B. Order which has become final

The Federal Deposit Insurance Act currently defines an "order which has become final" as an order not subject to further *judicial* review. The bill changes the definition so that an "order which has become final" is one not subject to further *administrative* review. This change will enable agencies to assess civil money penalties for violations of orders, and obtain injunctive relief, at an earlier stage in the regulatory process.

C. Controlling shareholder

"Controlling shareholder" is defined as a person that directly or indirectly, or acting through or in concert with one or more persons, owns or controls a insured financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

D. Additional terms

Each appropriate Federal banking agency may, by regulation, define terms not otherwise defined.

SECTION 924. EMPLOYMENT PROTECTION

This section forbids a federally insured financial institution or holding company to discharge or discriminate against any officer, director, or employee with respect to compensation, or terms or conditions of employment, because of information provided by that person to a regulatory authority or the Department of Justice relating to a possible violation of any law or regulation by the institution or an institution-related party. These protections do not apply to an individual who has deliberately caused the alleged violation.

SECTION 925. COORDINATION WITH COSA

This section permits the FDIC to recommend that COSA take enforcement action against any savings association. If COSA fails to take such action or to provide an acceptable plan to resolve the FDIC's concerns within 60 days, the FDIC may take the action itself if it determines that the institution is in an unsafe and unsound condition, or that unsafe or unsound practices will continue unless the FDIC takes the recommended action. In exigent circumstances, the FDIC may act before the 60-day period expires.

SECTION 926. EFFECT ON OTHER AUTHORITY

Section 926 provides that the authority granted to the Federal banking agencies under section 8 of the Federal Deposit Insurance Act shall be in addition to, and not restricted by, any other authority provided by Federal or State law.

SECTION 927. NONDELEGABILITY

Any decision by the FDIC to terminate or suspend insurance under section 8(a) of the FDI Act, or to initiate an enforcement action against a savings association under section 8(v) of that Act, must be made by the FDIC Board of Directors, and may not be delegated.

SECTION 928. EFFECT OF RESIGNATION OF INSTITUTION-RELATED PARTY

In *Stoddard v. Federal Reserve Board*, 868 F.2d 1308 (D.C. Cir. 1989), the court of appeals held that a Federal banking agency lacked authority to bring a removal action against an individual who had resigned just before removal proceedings were initiated. The court reasoned that the agency could not remove an individual who was not participating in the affairs of the institution. But removal also bars the defendant from future involvement in any insured financial institution. The court's decision would allow an individual to escape this bar merely by resigning just before the removal notice is served. To remedy this problem, this section provides that the jurisdiction and authority of the Federal banking agencies will not be affected by the resignation, termination of employment, or other separation of the party involved. This retention of authority will apply to all matters pending when the bill becomes law, whether or not formally commenced.

SECTION 929. PENALTY FOR PARTICIPATION

Currently, except with the prior written consent of the FDIC, no person may serve as a director, officer, or employee of an insured bank who has been convicted of any criminal offense involving dishonesty or a breach of trust. A bank that willfully violates this provision may be fined up to $100 per day. This section deletes the "willful" standard and instead provides that for each "knowing" violation of this provision, the financial institution and individual involved may be fined up to $1 million per day. This section aso provides a criminal fine of the same amount and imprisonment for up to five years. Finally, the amended prohibition will bar such an individual from serving as an institution-related party—thus making the prohibition broader than under current law.

SECTION 930. PARALLEL INCREASES IN CIVIL PENALTIES.

This section increases the maximum civil penalties in other banking statutes so that they parallel those in section 8 of the FDI Act.

SECTION 931. PENALTY FOR VIOLATION OF CHANGE IN BANK CONTROL ACT

Current law permits the agencies to assess a civil penalty of up to $10,000 per day for *willfully* violating the Change in Bank Control Act. The agencies may collect the fine only after a *de novo* evidentiary trail at the district court level. This section eliminates the right to such a trial and the requirement that violations be "willful." It also increases the maximum civil penalties to conform to the other civil money penalty provisions of the bill.

SECTION 932. REPORTS

Current law requires banks to make periodic reports on their security devices and procedures. It also requires national banks to file call reports within 10 days of a "call." Penalties of $100 per day may be assessed for late call reports and similar reports filed by State banks and bank holding companies.

This section repeals the requirement for periodic reports on security devices and procedures. It also eliminates the requirement to file call reports within 10 days of the request, and instead requires that such reports be filed within the time specified by the regulator.

This section provides civil penalties of up to $25,000 per day for filing late reports or filing any false, misleading, or incomplete report. If the violation results from reckless disregard for the safety or soundness of the institution, the civil penalty may be up to $1 million per day. Fines for minor violations of this requirement will, however, be limited to $2,500 per day (pursuant to section 8(i)(2)(B) of the FDI Act, as added by section 921 of the bill).

In assessing penalties under these provisions, the agencies must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require.

Subtitle B—Regulation by COSA

SECTION 941. REPORTS OF CONDITION AND PENALTIES

This section of the bill adds a new statutory provision requiring savings associations to file reports of condition with COSA. COSA may impose civil penalties of up to $25,000 per day on any association that fails to submit such a report within the time specified by COSA, or that files a false, misleading, or incomplete report. If the violation results from reckless disregard for the safety or soundness of the institution, the civil penalty may be up to $1 million per day. In asssessing penalties under this provision, COSA must consider the appropriateness of the penalty in view of the defendant's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require. Fines for minor violations of this provision will be limited to $2,500 per day (section 8(i)(2)(B) of the FDI Act, as added by section 921 of the bill).

SECTION 942. CONTINUITY OF AUTHORITY FOR PENDING LITIGATION

All litigation to which the Bank Board or FSLIC is a party when the bill becomes law shall be continued after the date of enactment by COSA, the FDIC, or the Federal Home Loan Bank Agency, as may be appropriate.

SECTION 943. EXTENSION OF AUTHORITY

COSA may continue any administrative proceeding initiated before the bill becomes law, or any administrative enforcement action taken before enactment under a provision of law repealed by the bill, as if that provision remained in effect. Any person subject to an order or condition issued by FSLIC or the Bank Board shall remain subject to that order or condition.

Subtitle C—Credit Unions

Sections 951-969 of the bill change the enforcement powers of the National Credit Union Administration Board ("NCUA Board") over insured credit unions to make those powers and the corresponding penalties equivalent to the powers and penalties applicable to insured banks.

Section 970 requires the NCUA Board, within 120 days after the bill becomes law, to prescribe audit standards requiring every insured credit union to be audited by an independent certified public accountant for any fiscal year in which the credit union: (1) has not conducted an annual supervisory-committee audit; (2) has not received a complete and satisfactory supervisory-committee audit; or (3) has had persistent and serious recordkeeping deficiencies, as determined by the NCUA Board. The failure of any insured credit union to obtain an independent audit required by this section will constitute an unsafe or unsound practice.

Subtitle D—Right to Financial Privacy

SECTION 981. AMENDMENT TO RIGHT TO FINANCIAL PRIVACY ACT

The right to Financial Privacy Act generally prohibits Government access to financial records held by a financial institution unless the customer consents to the release of his or her records, or the release of the records falls within one of the exceptions in the Act. For example, one exception permits disclosure of financial records to a supervisory agency in the exercise of its supervisory, regulatory, or monetary functions.

A. Definitions

Subsection (a) amends the definition of a "supervisory agency" to make clear that it includes agencies that supervise the activities of a financial institution holding company and any subsidiary of a financial institution or financial institution holding company. It also makes clear that a "supervisory agency" also includes any agency that has statutory authority to examine the financial condition, business operations, or records or transactions of an insured financial institution.

B. Exceptions

Subsection (b) amends the exception that permits disclosure of financial information to a supervisory agency in the course of its supervisory, regulatory, or monetary functions to similarly permit disclosure to a supervisory agency in the course of its receivership and conservatorship functions. The subsection makes clear that the exception applies whenever a supervisory agency exercises its supervisory role with respect to an institution or any institution-related party. The subsection also excepts from the Right to Financial Privacy Act any disclosure of financial records or information to employees or agents of the Federal Reserve Board or any Federal reserve bank made in connection with an extension of credit by the Federal Reserve System to depository institutions or others. Finally, the subsection similarly excepts the disclosure of financial records and information to employees and agents of the Resolution Trust Corporation in connection with the exercise of its conservatorship, receivership, or liquidation functions.

C. Grand jury information

Subsection (c) prohibits a financial institution from notifying a customer or any other party that a grand jury has subpoenaed a customer's records in connection with a possible violation of certain financial institution related criminal provisions. Violation of this prohibition may result in a criminal fine of up to $5,000, imprisonment for up to five years, or both.

TITLE X—CRIMINAL ENHANCEMENTS

SECTION 1001. INCREASED CRIMINAL PENALTIES AND CIVIL PENALTIES FOR CERTAIN FINANCIAL INSTITUTION OFFENSES

A. Increased criminal penalties

This section increases the criminal sanctions for several major financial institution crimes in title 18, United States Code. The crimes covered are: section 215 (financial institution bribery); sections 656 and 657 (financial institution misapplication and embezzlement); sections 1005 and 1006 (false entries on the books of financial institutions); sections 1007 and 1008, now consolidated as section 1007 (fraud on deposit insurer); section 1014 (false statement or overvaluation); and section 1344 (financial institution fraud). Maximum criminal penalties are increased to a $1,000,000 fine, fifteen years imprisonment, or both. If a higher fine is appropriate, a court may use section 3571(d) of title 18 to set the fine at twice the amount of pecuniary gain to the defendant or loss to the affected financial institution, whichever is greater.

B. Civil penalties

This section for the first time authorizes the Civil Division of the Justice Department and the U.S. attorneys' offices to seek civil penalties for the financial institution crimes listed above. This new authority gives the Justice Department flexibility to proceed either civilly or criminally (or both) on matters referred by a bank regulatory agency. The Justice Department may also develop cases civilly or criminally (or both) without a referral (e.g., by using information from an informant). The new authority provides an additional means of assessing penalties; it does not limit penalties that may otherwise be imposed by the bank regulatory under their own authority. If a civil penalty is assessed but not paid, the Attorney General may recover the penalty through an action in Federal district court.

The civil penalties provided by this section for violations of sections 656, 657, 1005-07, 1014, and 1544 of title 18 may be up to $1,000,000 for each day the violation continues, or up to $5,000,000, whichever is greater. The civil penalty for violating section 215 is up to $1,000,000 or the value of the thing offered or solicited, whichever is greater.

The Justice Department may develop civil cases through new civil summons powers provided by this section, comparable to the civil summons powers of numerous other agencies with civil penalty authority. The powers include standard summons enforcement provisions, including contempt authority.

C. Statute of limitations

Subsection (j) adds a new statute of limitations provision, section 3293 of title 18, which temporarily extends to 10 years the statute of limitations for the crimes covered by section 1001 (sections 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344 of title 18). After January 1, 1995, the statute of limitations will be reduced to seven years. This gives the Government until the end of 1994 to prosecute offenses occurring on or before December 31, 1987. Offenses occurring after that date would have to be prosecuted within seven years. Currently, the general five-year statute of limitations for all crimes listed in section 3282 of title 18 applies. The temporary extension to 10 years recognizes both the complexity of many of the investigations under these provisions and the volume of such investigations pending and anticipated in the near future. The permanent extension of the statute of limitations for these crimes to seven years reflects the need for a longer period to uncover and prosecute such offenses.

The lengthened limitation periods apply retroactively to any offense committed before the bill becomes law, so long as the five-year statute has not run as of that date. It is well established that the application of a new statute of limitations to crimes for which the old statute has not run does not violate the constitutional prohibition on *ex post facto* laws. *See, e.g., United States v. Richardson*, 512 F.2d 105 (3d Cir. 1975).

D. Sentencing

Pursuant to the Sentencing Reform Act of 1984, sentences for all crimes committed or completed on or after November 1, 1987, must accord with the sentencing guidelines promulgated by the U.S. Sentencing Commission. Subsection (k) relates to the sentencing guidelines for violations of nine criminal statutes: sections 215, 656, 657, 1005, 1006, 1007, 1008, 1014, and 1344 of title 18.

Subsection (k) states that additional, substantial periods of imprisonment should be imposed when violations of those sections jeopardize the safety or soundness of a financial institution. The subsection does not refer to a specific offense level, in deference to the view of some Members of Congress that the Sentencing Commission can best establish consistency in sentencing if Congress does not assign specific numerical values in its instructions to the Commission

when enacting or amending criminal statutes.

The new language makes clear, however, that the Commission should include specific offense characteristics in its guidelines for those offenses. These provisions should substantially lengthen the incarceration of defendants who jeopardize the safety and soundness of financial institutions. The amended guidelines should take into account the fact that an offense was committed against a federally insured financial institution, the potential effect on the community being served by the financial institution, the amount of loss caused by the offense, and the effect on the financial community.

While the bill was pending, the Sentencing Commission considered amending the guidelines pursuant to section 994(p) of title 28, United States Code, to increase the punishment for defendants convicted of financial institution fraud. If the guidelines are amended to ensure that defendants who jeopardize the safety and soundness of a financial institution receive a substantial period of incarceration in addition to the period that can generally be imposed for the underlying fraud, no further Commission action may be necessary.

SECTION 1002. MISCELLANEOUS REVISIONS TO TITLE 18.

Subsection (a) of this section replaces "Federal Home Loan Bank Board" with "Chairman of the Office of Savings Associations" in title 18, consistent with other provisions of the bill.

Subsections (b) and (c) extend sections 212 and 213 of title 18 (relating to gratuities and loans to bank examiners) to examiners of COSA, and change the references to FDIC-insured "banks" to FDIC-insured "financial institutions."

Subsection (d) repeals section 1009 of title 18, which currently makes it a crime to circulate rumors about FSLIC.

Subsections (e), (f), (g), and (j) make technical revisions to four criminal provisions necessitated by this Act, such as deleting references to FSLIC.

Subsection (h) amends the obstruction-of-justice statute, making it a crime for a financial institution, or any officer, director, partner, or employee of a financial institution to notify a customer or any other party, including another financial institution insider, of the existence or contents of a grand jury subpoena relating to one of the financial institution crimes discussed above in connection with section 1001 (sections 215, 656, 657, 1007, 1008, 1014, or 1344 of title 18).

Subsection (i) makes several financial institution crimes predicate offenses for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO): section 215 (relating to the receipt of commissions or gifts for approving loans); sections 656 and 657 (financial institution misapplication and embezzlement); sections 1004, 1005, 1006, 1007, 1014 (relating to fraud and false statements); and 1344 (financial institution fraud).

SECTION 1003. CIVIL AND CRIMINAL FORFEITURE

Section 1003 adds civil (new section 983) and criminal (new section 984) forfeiture authority to title 18 for use in connection with the financial institution offenses discussed above in connection with section 1001 of the bill.

Civil forfeiture will allow the Department of Justice to move immediately against the proceeds of a violation or against property traceable to those proceeds as soon as the Department has probable cause. Because of the nature of the crimes and the victims, forfeited amounts will, after deduction of forfeiture costs, be applied differently than forfeitures under other provisions of law. If the affected institution is in receivership, section 983(e)(3) requires that the proceeds of the forfeiture be deposited in the Treasury's General Fund. If the institution is not in receivership, new section 983(e)(4) requires that the proceeds be deposited in the General Fund, or at the option of the appropriate Federal banking agency, be paid as restitution to the institution. As with other victim restitution, the amount received through the forfeiture would, under section 3523 of title 18, be deducted from other amounts received as restitution in other civil actions or through cease-and-desist orders.

Criminal forfeiture would be mandatory following a conviction—unlike orders for victim restitution, which are discretionary. The proceeds of such a criminal forfeiture would be applied in the same way as the proceeds of a civil forfeiture.

SECTION 1004. GRAND JURY AMENDMENTS

Subsection (a) amends rule 6(e) of the Federal Rules of Criminal Procedure to overcome impediments to the Government's civil enforcement efforts resulting from two decisions of the United States Supreme Court. In *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), the Court ruled that Justice Department attorneys handling civil cases are not "attorneys for the government" for purposes of rule 6(e). Thus such attorneys need a court order to obtain grand jury materials pertaining to their civil cases. Such an order may be granted only upon a showing of "particularized need." In a companion case, *United States v. Baggot*, 463 U.S. 476 (1983), the Court narrowly defined the purpose for which disclosure may be made. It held that agency proceedings such as civil tax audits are not "preliminary to a judicial proceeding," and thus no court order may be secured in such cases, no matter how compelling the need.

This section (1) permits prosecutors to automatically disclose grand jury materials to Justice Department civil attorneys for civil purposes without a court order; (2) expands the types of proceedings for which other departments and agencies may gain court-authorized disclosure to include not only "judicial proceedings" but also other matters within their jurisdiction, such as adjudicatory and administrative proceedings; and (3) reduces the "particularized need" standard for court-authorized disclosure to a lesser standard of "substantial need" in certain circumstances. The amendments also codify that a criminal prosecutor who conducts a grand jury investigation may present a companion civil case.

Amended rule 6(e)(3)(A)(i) permits disclosure to any Government attorney (e.g., Department of Justice attorney) "to enforce Federal criminal or civil law." This includes civil enforcement in all non-criminal actions to which the United States is a party, such as civil claims against bank directors and officers under section 1001 of the banking laws. Disclosure is not limited by the term "judicial proceeding," but can be made for the sole purpose of an initial review of potential civil liability, or to facilitate global dispositions of cases.

The amendment covers disclosures only to attorneys and their support staff such as secretaries and paralegals. Further disclosures to non-attorney personnel such as examiners, auditors, or agents will require a court order.

The words "civil law" in amended rule (6)(e)(3)(B) permit personnel to whom disclosure has been made for criminal purposes under subparagraph (A)(ii), to use the disclosed material to assist any attorney for the Government in enforcing civil law. It will allow the Justice Department's civil attorneys to discuss the evidence without court order not only with the criminal prosecutor but also with the agents, auditors, or examiners who worked on the grand jury investigation.

Before this section was passed, the Department of Justice assured the Senate that it intended to issue policy guidelines that restate current practices and case law to the effect that a grand jury may not be improperly used to gather evidence for civil purposes. The guidelines will state that the criminal prosecutor has discretion to decide whether and when to disclose materials to civil attorneys, and what materials should be disclosed. Disclosures will be limited to those materials relevant to the civil case.

Rule 6(e)(3)(C)(i) is amended by adding the words "particularized need" to reflect the current standard for court-authorized disclosures preliminary to or in connection with a judicial proceeding. The addition does not change current law, but demonstates the contrast between this higher standard and the lesser standard of "substantial need" required in new subparagraph (C)(v), applicable when Government agencies seek disclosure with the concurrence of the Department of Justice. Rule 6(e)(3)(C)(i) will provide the only method of disclosure available to private parties. It can also be used by Government agencies with independent litigating authority when the Justice Department exercises its discretion and declines to request disclosure.

New rule 6(e)(3)(C)(v) authorizes prosecutors to seek court approval to release grand jury information to a Government agency for use in matters within the agency's jurisdiction. This is intended to eliminate the requirement that court-authorized disclosure be for use in a "judicial proceeding," and also to reduce the "particularized need" standard to a "substantial need" standard.

Under the substantial need standard, a court could consider a number of factors, such as: (1) the public interest served by disclosure—particularly the protection of the public health or safety or the safety or soundness of a federally insured financial institution; (2) the burden or cost of duplicating the grand jury investigation; (3) the possibility that witnesses may not be available; (4) whether the department or agency already has a legitimate independent right to the materials; (5) avoiding needless inefficiency or waste of resources; (6) the need to prevent ongoing violations of law; and (7) the expiration of any applicable statute of limitations. In weighing these considerations, a court could not deny disclosure merely because the agency for which disclosure is sought may have alternative discovery tools available to it.

On the other hand, the "substantial need" test does not contemplate that a court would simply rubber stamp the Government's request for disclosure. Review under the standard should require a Justice Department attorney to make more than a showing of mere convenience or simple relevance to matters within the agency's jurisdiction.

The phrase "for use in relation to any matter within the jurisdiction of such de-

partment or agency" makes clear that an agency's administrative, enforcement, and other non-judicial proceedings are included among those that may warrant disclosure. Because the phrase "matters within the jurisdiction of an agency" has been broadly interpreted in cases involving section 1001 of title 18, it was used here to avoid listing every conceivable agency proceeding. In the context of administrative and enforcement actions involving financial institutions, it could include use in licensing, examination, applications involving change in control or ownership, removal actions, cease-and-desist orders, termination of insurance, receivership actions, or penalty assessments.

Courts should retain effective control of grand jury disclosure by permitting it only when an agency shows substantial need, and by delineating in their disclosure orders the specific purposes for which disclosure is authorized. Department of Justice attorneys should not seek disclosure without being convinced that there is a strong public interest for each disclosure. Agency personnel who receive court-authorized disclosure of grand jury materials under this subparagraph may use the material only for the purpose for which the court order was granted.

Subsection (c) amends the Fair Credit Reporting Act to permit access to consumer credit report records pursuant to a subpoena issued by a grand jury. The Act currently forbids a credit-reporting agency from furnishing such records except in a few restricted instances. One of these is "in response to the order of a court." Although some district courts have held that a Federal grand jury subpoena is such an order, the predominant judicial view is that a grand jury subpoena does not qualify. *See, e.g., In re Application to Quash Grand Jury Subpoena,* 526 F. Supp. 1253 (D. Md. 1981).

SECTION 1005. LITIGATION AUTHORITY

This section affirms that the changes made by the bill in the responsibilities of Federal banking agencies do not affect the Attorney General's current authority under section 516 of title 28, to conduct and coordinate litigation on behalf of the United States Government.

SECTION 1006. DEPARTMENT OF JUSTICE APPROPRIATION

This section authorizes appropriations of $50 million annually for fiscal years 1989 through 1991 to investigate and prosecute financial institution crimes. This additional funding is authorized to be appropriated to the Attorney General to supplement funding included in the annual Department of Justice appropriations. The Department should treat these additional appropriations as additional funds, and should not use them to replace funds already drawn from other functions to investigate and prosecute crimes involving financial institutions. To achieve the objectives of the authorizations, the Attorney General may adjust the funding among the different organizations involved in investigating and prosecuting financial institution fraud, such as the Federal Bureau of Investigation, the U.S. attorney's offices, and the Criminal and Tax Divisions.

TITLE XI—FEDERAL HOME LOAN MORTGAGE CORPORATION

SECTION 1101. SHORT TITLE

This section designates this title as the "Federal Home Loan Mortgage Corporation Transition Act."

SECTION 1102. PURPOSES.

This section sets forth the purposes of the title: to provide stability in the secondary market for home mortgages; to ensure that the Federal Home Loan Mortgage Corporation ("Freddie Mac") responds appropriately to the private capital market; and to ensure that Freddie Mac continues to provide liquidity for mortgage investments.

SECTION 1103. NEW BOARD OF DIRECTORS; INTERIM BOARD

Under current law, the members of the Federal Home Loan Bank Board also serve as Freddie Mac's board of directors. The Bank Board will be dissolved under section 301 of the bill.

A. New Board

In place of the Bank Board, this section establishes a new board of directors for Freddie Mac patterned after the board of the Federal National Mortgage Association ("Fannie Mae"). The new board will consist of 18 directors, of whom 13 will be elected annually by voting common stockholders and 5 will be appointed annually by the President. Of the presidential appointees, one must be from the homebuilding industry, one from the mortgage-lending industry, and one from the real-estate industry. Any director may be removed by the President for cause.

B. Interim Board

Until a new board of directors is elected, Freddie Mac will be governed by an interim board consisting of the President of Freddie Mac, and the persons serving as Chairman of the Federal Home Loan Bank Board and Secretary of Housing and Urban Development when the bill becomes law.

SECTION 1104. REGULATORY POWER

This section gives the Secretary of Housing and Urban Development general regulatory authority over Freddie Mac and authorizes the Secretary to prescribe such rules and regulations as he determines to be necessary and proper. Pursuant to his regulatory authority, the Secretary may, for example, (1) require that a reasonable portion of Freddie Mac's mortgage purchases further the national goal of providing housing for low- and moderate-income families, so long as those mortgages provide a reasonable economic return to Freddie Mac; (2) limit cash dividends on Freddie Mac's common stock based on Freddie Mac's current earnings and capital; (3) audit Freddie Mac's books and financial transactions; and (4) require Freddie Mac to report on its activities.

Without the Secretary's approval, Freddie Mac may not (1) issue stock or debt obligations convertible into stock, or (2) purchase, service, sell, lend on the security of, or otherwise deal in residential mortgages. The Secretary will be deemed to have approved all programs or activities involving purchasing, servicing, selling, lending on the security of, or otherwise dealing in residential mortgages by Freddie Mac on or before the effective date of this subsection; thus those transactions need not be submitted for his initial approval, although he will still have regulatory oversight and control over those activities.

When Freddie Mac seeks approval or other action from the Secretary pursuant to the Federal Home Loan Mortgage Corporation Act, the Secretary must within 45 days after receiving the request either grant the request or report to Congress why he has not done so.

This section specifies that Freddie Mac's debt-to-capital ratio may not exceed 15 to 1 without the Secretary's approval.

SECTION 1105. COMMON STOCK

Freddie Mac currently has no voting stock outstanding. The common stock, all nonvoting, may be held only by Federal home loan banks. The senior participating preferred stock is held by private investors. This section converts each outstanding share of senior participating preferred stock into a share of voting common stock.

SECTION 1106. FEES

This section specifies that Freddie Mac may not charge any mortgagee approved by the Secretary of Housing and Urban Development for participating in any mortgage insurance program under the National Housing Act, solely because of the Secretary's approval.

SECTION 1107. STANDBY CREDIT

This section permits the Secretary of the Treasury to purchase and sell Freddie Mac notes, debentures, bonds, or other obligations or securities. As the Secretary's purchase of such an instrument amounts to an extension of credit from the Treasury to Freddie Mac, such purchases may be made only to the extent approved in appropriations Acts, and the Secretary's holdings of such instruments may not exceed $2.25 billion at any given time.

SECTION 1108. TERMS OF OBLIGATIONS

A. Unsecured debt obligations

This section prohibits Freddie Mac from issuing any note, debenture, or substantially similar unsecured debt obligation without the approval of the Secretary of the Treasury. The Secretary will be deemed to have approved any such obligation with a maturity of one year or less that Freddie Mac has issued or is issuing when the bill becomes law, but will also be free to revoke the approval. A note, debenture, or substantially similar debt obligation with a maturity of more than one year that Freddie Mac has issued or is issuing when the bill becomes law will also be deemed approved, but that approval will expire 60 days after the bill becomes law.

B. Mortgage-related securities

This section prohibits Freddie Mac from issuing mortgage-related securities without the approval of the Secretary of the Treasury. Any such securities that Freddie Mac has issued or is issuing when the bill becomes law will be deemed approved.

SECTION 1109. COLLATERALIZED MORTGAGE OBLIGATIONS

This section provides that Freddie Mac may lend and make commitments to lend on the security of mortgages it is authorized to purchase. Freddie Mac is, however, prohibited from using that authority to originate mortgage loans or to make interim loans to sellers or originators of mortgages pending the sale of those mortgages in the secondary market.

A parallel statutory framework will apply to Fannie Mae.

TITLE XII—PARTICIPATION BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

SECTION 1201. DEFINITIONS

This section defines four terms used in title XII.

"State housing finance authority" means a public housing agency or an instrumentality of a State, or political subdivision of a

State, that provides residential mortgage loan financing.

"Nonprofit entity" means any not-for-profit corporation chartered under State law, including a nonprofit corporation established by the National Corporation for Housing Partnerships.

"Mortgage-related assets" means residential mortgage loans secured by one-to-four family or multi-family dwellings and real property improved with such dwellings, in the jurisdiction of the pertinent State housing authority.

"Net income" means income remaining after all associated expenses have been deducted.

SECTION 1202. ACQUISITIONS BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

Section 1202 authorizes State housing finance authorities and nonprofit entities to purchase mortgage-related assets (1) from the Resolution Trust Corporation or (2) from financial institutions for which the FDIC is receiver or conservator. State authorities and nonprofit entities may purchase such assets without regard to any other provision of law. Contracts to purchase mortgage-related assets shall be effective according to their own terms without any further approval, assignment, or consent.

Any State authority or nonprofit entity that purchases mortgage-related assets must devote any net income received from such assets to providing low- and moderate-income housing within its jurisdiction.

TITLE XIII—STUDY OF FEDERAL DEPOSIT INSURANCE AND BANKING REGULATION

SECTION 1301. STUDY

This section requires a study of the Federal deposit insurance system by the Secretary of the Treasury in consultation with the Chairman of the Federal Reserve Board, the Comptroller of the Currency, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Office of Savings Associations, the Chairman of the National Credit Union Administration, and the Director of the Office of Management and Budget.

SECTION 1302. TOPICS

This section specifies eight topics that the study required by section 1301 should include. In covering these topics, the study should describe and analyze the status quo and identify and evaluate possible reforms. The eight topics are (1) the risk and rate structure for deposit insurance; (2) incentives for market discipline, including supplementary private insurance; (3) the scope of deposit insurance coverage and its effect on the insurance fund, including possible coinsurance requirements for deposits of $10,000 to $100,000; (4) certain specific reform proposals, including market-value accounting, assessments on foreign deposits, additional limitations on brokered deposits and multiple insured accounts, and the addition of collateralized borrowing to the deposit insurance base; (5) policies for dealing with insured financial institutions that are insolvent or nearly insolvent; (6) examining managers of insured financial institutions on the principles and techniques of risk management; (7) the efficiency of housing subsidies through the Federal Home Loan Bank System; (8) whether insured credit unions and the National Credit Union Share Insurance Fund are adequately capitalized; and (9) whether supervision of the National Credit Union Share Insurance Fund should be separated from other functions of the National Credit Union Administration.

SECTION 1303. FINAL REPORT

This section requires the Secretary of the Treasury to submit a final report to Congress within 18 months after the bill becomes law. The final report should detail the findings and conclusions of the study required by this title, and set forth recommendations for administrative and legislative reform.

TITLE XIV—MISCELLANEOUS PROVISIONS

SECTION 1401. GAO STUDY OF THE CREDIT UNION SYSTEM

A. Study

Subsection (a) requires the Comptroller General of the United States to conduct a comprehensive study of the credit union system. The study must examine: (1) credit unions' present and future role in financial markets; (2) the financial condition of credit unions; (3) credit unions' capital; (4) credit union regulation and supervision at both the Federal and State levels; (5) the common-bond requirement; and (6) the structure and financial condition of the National Credit Union Share Insurance Fund, including whether supervision of the fund should be separated from other functions of the National Credit Union Administration Board. The Comptroller General should also examine such other related matters as he believes appropriate. The study should compare the regulation of credit unions with that of other financial institutions.

B. Submission

No more than 18 months after the bill becomes law, the Comptroller General must submit a report of the study required by subsection (a) to the House and Senate Banking Committees. The report must contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Comptroller General believes appropriate.

SECTION 1402. CREDIT UNION REGULATOR SALARIES

This section removes the limit on compensation paid to employees of the National Credit Union Administration Board. In fixing such compensation, the NCUA Board shall consult and seek to maintain comparability with compensation paid by the Federal banking agencies. The NCUA Board and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with specialized expertise needed to make sure that federally insured depository institutions operate safely and soundly.

The salaries and expenses of the NCUA Board and its employees will be paid from fees and assessments levied on credit unions. These funds will not be treated as Government funds or appropriated monies, nor are they subject to apportionment.

SECTION 1403. AMENDMENT TO SECTION 203 OF THE FEDERAL CREDIT UNION ACT

This section amends section 203(b) of the Federal Credit Union Act by striking the words "deposits and."

SECTION 1404. COMPENSATION OF EMPLOYEES OF THE COMPTROLLER OF THE CURRENCY

This provision removes the limit on compensation paid to employees of the Office of the Comptroller of the Currency. In fixing such compensation, the Comptroller shall consult and seek to maintain comparability with the compensation paid by the other Federal banking agencies. The Comptroller and the other agencies should use such flexibility not to enter into a bidding war for other agencies' employees, but rather for all agencies to maintain comparable compensation at levels sufficient to attract and retain employees with the specialized expertise needed to make sure that federally insured depository institutions operate safely and soundly.

Whenever the Comptroller submits a budget estimate or request to any officer or employee in the executive branch, he shall concurrently transmit copies of that estimate or request to Congress. Whenever the Comptroller submits any legislative recommendation to the President or to the Office of Management and Budget, he shall concurrently transmit copies to Congress. No officer or agency may require the Comptroller to submit legislative recommendations or testimony to any other officer or agency for prior approval, comments, or review.

SECTION 1405. GAO AUDIT OF ALL ORGANIZATIONS CARRYING OUT FUNCTIONS UNDER THIS ACT

A. Entities subject to GAO audit

The Comptroller General is authorized to audit all agencies, corporations, organizations, and other entities that perform functions or activities under the bill with respect to those functions or activities. Similarly, the Comptroller is authorized to audit all persons and organizations that, by contract, grant, or otherwise, provide goods or services to, or receive financial assistance from, any entity performing functions or activities under the bill with respect to the provision of such goods and services or the receipt of such assistance.

B. GAO's authority to conduct audits

Subsection (b) permits the Comptroller General to determine the nature, scope, terms, and conditions of audits conducted under this section. That authority supplements the Comptroller General's authority to conduct audits under other provisions of the bill and other laws.

C. GAO access to books and records

The Comptroller General shall have access to—and may examine and copy all relevant records and property in the possession, custody, or control of—persons and entities subject to audit under this section. Section 716 of title 31, United States Code (relating to judicial enforcement of the Comptroller General's right of access to records and his duty to keep information confidential), applies to audits conducted under this section.

SECTION 1406. REPORTS ON LOAN DISCRIMINATION

The Secretary of Housing and Urban Development, the Comptroller of the Currency, the Federal Reserve Board, the FDIC, the NCUA, and COSA must each submit a report to Congress regarding discriminatory mortgage-lending practices within 60 days after the bill becomes law. Each report must contain findings on the extent of discriminatory lending practices by mortgage-lending institutions under the agency's regulation or supervision. The report by the Secretary of HUD may exclude information on mortgage lenders that are included in reports of the other agencies. Findings of each report under this section must be based on a review of currently available loan acceptance and rejection statistics. Each

report must recommend appropriate measures to ensure nondiscriminatory lending.

SECTION 1407. EQUAL OPPORTUNITY

A. Equal employment opportunity

Subsection (a) broadens the scope of Executive Order 11478, which provides for equal employment opportunity in the Federal Government, to eight Federal agencies and other entities that perform functions or activities under the bill, namely: (1) the Comptroller of the Currency; (2) the Chairman of the Office of Savings Associations; (3) the Federal home loan banks; (4) the FDIC; (5) the Federal Home Loan Mortgage Corporation; (6) the Federal National Mortgage Association; (7) the Resolution Trust Corporation; and (8) the Resolution Finance Corporation.

B. Solicitation of contracts

Subsection (b) requires the entities covered by subsection (a) to establish programs to encourage minority- and women-owned businesses to participate in their procurement activities. Procurement involves buying and contracting for goods and services required to carry out regular business activities. Certification requirements for minority- and women-owned businesses will follow the guidelines of the Small Business Administration. Programs established in accordance with this subsection must be consistent with prudent business practices. This section does not authorize setting aside fixed percentages of procurement contracts.

SECTION 1408. ANNUAL REPORT ON THE CONDITION OF THE FEDERAL DEPOSIT INSURANCE FUND

Beginning on January 31, 1990, the FDIC must report annually to the House and Senate Banking Committees on the condition of the Bank Insurance Fund and the Savings Association Insurance Fund. The report must evaluate the condition of the insurance funds in light of six economic factors: (1) the general level of interest rates; (2) the general volatility of interest rates; (3) the yield curve for United States Treasury obligations; (4) the spread between interest rates paid on Treasury obligations and those paid on obligations of insured financial institutions; (5) the default rate on outstanding loans held by insured institutions; and (6) the rate of prepayments on fixed- and variable-rate loans held by insured financial institutions.

The annual report must analyze in detail: (1) the current financial condition of the deposit insurance funds; (2) the current levels of the six economic factors; (3) each deposit insurance fund's exposure to losses, assuming no change in the economic factors; (4) each deposit insurance fund's exposure to losses under a range of reasonably possible changes in each of the economic factors, including the worst-reasonable-case scenarios for each economic factor and all factors combined; and (5) background information on historic levels and variations of the economic factors that show how the scenarios presented are reasonable.

SECTION 1409. UNIFORM ACCOUNTING AND CAPITAL STANDARDS

This section requires the Federal banking agencies to establish uniform accounting standards for determining capital ratios of all federally insured institutions and other regulatory purposes.

This section also requires each agency to report annually to Congress on any differences between the agency's capital standards and the capital standards of the different agencies. Their reports must explain the reasons for the discrepancies, and must be published in the FEDERAL REGISTER.

SECTION 1410. GROSS-MARKETING RESTRICTIONS ON COMPANIES CONTROLLING GRANDFATHERED NONBANK BANKS

A. Nonbank banks

Section 4 of the Bank Holding Company Act generally restricts the activities of bank holding companies (i.e., companies that control banks) to (1) "banking or . . . managing or controlling banks," and (2) activities that the Federal Reserve Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Thus bank holding companies generally cannot engage in commercial activities, and their financial activities must satisfy the "closely related" standard. Before the enactment of the Competitive Equality Banking Act of 1987 ("CEBA"), however, the Banking Holding Company Act defined a "bank" narrowly. Companies controlling banks that did not meet that narrow definition (so-called "nonbank banks";) were not subject to the Act's restrictions. As a result, commercial companies could obtain control of FDIC-insured banks and engage directly or through subsidiaries in a wide range of activities impermissible for bank holding companies.

B. The restrictions imposed by CEBA on cross-marketing through affiliates

CEBA redefined "bank" and imposed restrictions on existing nonbanks in order to limit the competitive advantages companies controlling such grandfathered nonbank banks may enjoy over other bank holding companies. One of the restrictions, in section 4(f)(3)(B)(ii) of the Bank Holding Company Act, generally prohibits a grandfathered nonbank bank from allowing its products or services to be cross-marketed by or through an affiliate unless the affiliate engages only in activities permissible for a bank holding company.

C. What this section does

This section amends section 4(f)(3)(B)(ii) to permit an affiliate of a grandfathered nonbank bank to cross-market the bank's products or services with products or services of the affiliate permissible for a bank holding company, even if the affiliate also engages in activities impermissible for a bank holding company. For example, an affiliate engaged in insurance activities could not cross-market the nonbank bank's certificates of deposit with insurance policies that a bank holding company is not permitted to sell, but the affiliate could cross-market the certificates of deposit with credit-related insurance that a bank holding company may sell under section 4(c)(8).

SECTION 1411. APPRAISAL SUBCOMMITTEE

This section amends the Federal Financial Institutions Examination Council Act of 1978 by adding a new section 1010 creating an Appraisal Subcommittee and requiring the Federal financial institution regulatory agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, the FDIC, COSA, and the NCUA Board) to develop standards for the performance of appraisals.

A. Establishment of an Appraisal Subcommittee

This section requires the Federal Financial Institutions Examination Council to establish an Appraisal Subcommittee, composed of one representative from each Federal financial institution regulatory agency. Each representative on the Appraisal Subcommittee must be familiar with the appraisal profession.

The Appraisal Subcommittee will monitor: (1) State certification and licensing requirements for appraisers; (2) regulations of the Federal financial institution regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation (collectively the "Regulatory Agencies") that govern real-estate related financial transactions requiring the services of an appraiser ("Federally Related Transactions"); and (3) the practices, procedures, activities, and organizational structure of the Appraisal Foundation, a non-profit organization created in 1987 to develop uniform appraisal standards and appraiser qualifications for State certification and licensing. The Appraisal Subcommittee must establish a national registry of State certified and licensed appraisers eligible to perform appraisals in Federally Related Transactions. No later than January 31 of each year, the Appraisal Subcommittee must report to Congress on its performance in carrying out its functions.

The Appraisal Subcommittee will be funded through a single $5 million appropriation, authorized under this section, covering the two years after the bill becomes law. Thereafter, the Appraisal Subcommittee will meet its expenses by assessing and collecting annual registration fees (up to $25) from State certified and licensed appraisers eligible to perform appraisals in Federally Related Transactions.

B. Promulgation of appraisal rules by regulatory agencies

Not later than one year after the bill becomes law, each of the Regulatory Agencies must adopt standards governing the performance of real-estate appraisals in Federally Related Transactions. The standards must be no less stringent than the generally accepted appraisal standards ("GAAS") established by the Appraisal Standards Board of the Appraisal Foundation. The standards may be more stringent than GAAS if the Regulatory Agency determines that higher standards are consistent with its statutory responsibilities.

The Regulatory Agencies must also adopt standards governing the types of Federally Related Transactions requiring the services of State certified or licensed appraisers. In adopting those standards, the Regulatory Agencies must consider whether transactions are, individually or collectively, of sufficient financial or public policy importance to the U.S. Government that a State certified appraiser must perform the appraisal. State certified appraisers must in any event perform appraisals of real property valued at $1 million or more. Appraisals that may be performed by State licensed appraisers may also be performed by State certified appraisers.

C. Establishment of appraiser qualifications

As a general rule, the Regulatory Agencies may accept the certifications and licenses granted by the appropriate State agencies. However, a Regulatory Agency may also impose additional certification criteria consistent with its statutory responsibilities.

State requirements for designating certified appraisers must meet minimum certification criteria established by the Appraiser Qualification Board of the Appraisal Foundation. These criteria include satisfactory completion of an examination equivalent to the Uniform State Certification Examina-

tion approved by the Appraiser Qualification Board.

The Appraisal Subcommittee must review certifications and licenses awarded by the States. The Subcommittee may refuse to recognize certifications and licenses granted by State agencies whenever the State agency: (1) has failed to adopt and enforce standards, qualifications, or procedures prescribed under this section; (2) lacks adequate authority to carry out its responsibilities; or (3) has failed to act decisively regarding appraisal standards, appraiser qualifications, or appraiser supervision, as required by this section. The Appraisal Subcommittee must establish procedures to notify State agencies of its determination not to recognize their certifications and licenses. These procedures must give the State agencies an opportunity to present information to contest the denial or correct the conditions that caused the Appraisal Subcommittee to deny recognition. Appraisal Subcommittee actions denying recognition are subject to judicial review.

After July 1, 1991, at the latest, all appraisals performed in connection with Federally Related Transactions must be performed by State certified or licensed appraisers in accordance with this section. The Appraisal Subcommittee may extend the effective date until December 31, 1991, with the approval of the Federal Financial Institutions Examination Council, if it finds that a State has made substantial progress in establishing a State certification and licensing system that meets the requirements of this section.

The Appraisal Subcommittee may, with the approval of the Federal Financial Institutions Examination Council, waive the requirement to use State certified and licensed appraisers when a shortage of certified or licensed appraisers exists or when compliance with the requirement would create inordinate delays in performing appraisals.

D. Penalties for noncompliance

Financial institutions and other entities that knowingly employ an appraiser who is not certified or licensed in accordance with this section are subject to civil money penalties of up to $25,000 for a first violation and $50,000 for each subsequent violation. Civil money penalties may be imposed only after an administrative hearing conducted by a Federal financial institution regulatory agency or an appropriate State agency. All such civil money penalties are subject to judicial review.

E. Application of this section to other Federal agencies

The Office of Management and Budget may require other Federal agencies and departments to comply with this section.

SECTION 1412. SENSE OF THE SENATE RESOLUTION REGARDING TAX PROVISIONS GOVERNING FDIC AND FSLIC ASSISTED TRANSACTIONS

This section sets forth the Senate's finding that special tax provisions applicable to FDIC and FSLIC resolution of troubled depository institutions constitute inherently inefficient subsidies and do not permit for a full accounting of the costs of financing those resolutions. This section expresses the sense of the Senate that the House of Representatives, which is constitutionally responsible for originating tax measures, should adopt and send to the Senate legislation that repeals certain tax preferences relating to such transactions. Repeal of those tax preferences would apply only to transactions on or after the date this bill becomes law.

SECTION 1413. STATUS OF CERTAIN THRIFT INSTITUTION

This section permits a particular savings association to convert from SAIF membership to BIF membership. In 1987, when CEBA first restricted conversions from FSLIC to the FDIC, a drafting error inadvertently removed an intended exception for that institution. This section corrects that error.

SECTION 1414. PASSIVE INVESTMENTS BY COMPANIES CONTROLLING GRANDFATHERED NONBANK BANKS

A. Current restrictions on acquiring shares or assets of additional banks or thrift institutions

Section 4(f)(2)(A) of the Bank Holding Company Act generally prohibits companies controlling grandfathered nonbank banks from directly or indirectly (1) acquiring control of any additional bank or thrift institution, or (2) acquiring control of more than 5 percent of the shares or assets of any additional bank or thrift institution. These two restrictions are intended to limit the competitive advantages companies controlling grandfathered nonbank banks may enjoy over other bank holding companies (discussed above in connection with section 1410).

Only one exception exists to the first of the two restrictions, section 4(f)(2)(A)(i) of the Act: a company controlling a grandfathered nonbank bank may, under certain emergency circumstances, acquire control of a failed or failing thrift institution. (This emergency acquisition authority is currently contained in section 408(m) of the National Housing Act. The bill repeals section 408(m), and replaces it with a new section 13(k) of the Federal Deposit Insurance Act.)

Five exceptions exist to the second restriction, section 4(f)(2)(A)(ii) of the Act, which prohibits acquisitions of more than 5 percent of the shares or assets of any additional bank or thrift institution. These exceptions exclude shares or assets in the following categories when calculating compliance with the 5-percent restriction:

(1) shares acquired in a bona fide fiduciary capacity;

(2) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) shares held in an account solely for trading purposes (i.e., as a market-maker);

(4) loans or other accounts receivable acquired in the normal course of business; and

(5) shares or assets of a failed or failing thrift institution acquired under the emergency acquisition authority described above.

B. Changes Made by This Section

This section revises section 4(f)(2)(A)(ii) of the Act to clarify what conduct will and will not violate the 5-percent restriction. The section rephrases the current exception for fiduciary holdings and makes additional exceptions for independent fiduciaries, insurance companies, proxy solicitation, and debt collection. Exceptions (2) through (5) remain unchanged.

As under current law, the exceptions relate only to the 5-percent restriction; they do not affect the prohibition in section 4(f)(2)(A)(i) of the Act against acquiring *control* of any additional bank or thrift institution.

1. Shares held as a bona fide fiduciary.—This section amends the current exception for fiduciary holdings, subclause (I) of section 4(f)(2)(A)(ii) of the Act, to specify that the exception will not be lost merely because the fiduciary has sole discretion to vote shares pursuant to its fiduciary obligations.

This section also rephrases subclause (I) for clarity. The subclause currently refers to shares "acquired in a bona fide fiduciary capacity," whereas the revised subclause refers to shares "held as a bona fide fiduciary." The use of "held" rather than "acquired" is consistent with the exceptions for shares held as an underwriter or market-maker, and makes clear that the exception does not apply in perpetuity merely because one *originally acquired* the shares as a bona fide fiduciary. Thus one who ceases to hold such shares as a bona fide fiduciary but continues to hold them in some other capacity may not avail himself of the exception. The use of "as a bona fide fiduciary" rather than "in a bona fide fiduciary capacity" emphasizes that the exception focuses on *acting* as a bona fide fiduciary rather than on mere fiduciary status. Thus, for example, the fiduciary must act solely in the interest of the beneficiaries rather than to aggrandize the company controlling the grandfathered nonbank bank.

2. Shares held by an independent fiduciary.—This section adds a new subclause (II) to the Act to provide an exception for shares held by an independent party as a bona fide fiduciary solely for the benefit of employees of the company controlling the grandfathered nonbank bank, employees of the company's subsidiaries, or those employees' beneficiaries. The new exception responds to concern that the basic fiduciary exception in subclause (I) may not apply to shares held by an independent party. The language of subclause (II), like that of subclause (I), emphasizes that the fiduciary is to *act* as a bona fide fiduciary solely for the benefit of the employees and their beneficiaries (and not, e.g., to aggrandize the company controlling the grandfathered nonbank bank).

3. Shares held by insurance companies.—This section adds a new subclause (VIII) to create an exception for insurance company subsidiaries of a company that controls a grandfathered nonbank bank. The exception cannot be used to hold more than 1 percent of any class of shares of a given bank or thrift institution. This limit prevents the exception from becoming an open-ended loophole through which the 5-percent restriction could be evaded merely by holding shares through one or more insurance companies.

4. Proxy solicitation.—In addition to perpetuating the current exception for shares held as a market-maker, subclause (IV) provides that the 5-percent restriction is not violated merely by acquiring control of voting rights in the normal course of a proxy solicitation.

5. Debt collection.—Subclause (VI) provides an exception for shares or assets acquired in securing or collecting a debt previously contracted in good faith. The exception follows the model of section 2(a)(5)(D) of the Act.

SECTION 1415. SEPARABILITY OF PROVISIONS

This section specifies that the provisions of the bill are separable: should a court hold invalid any provision or the application of any provision to any person or under any circumstance, that holding will not affect the validity of any other provision or of any provision as it relates to any other person or under any other circumstance.

TITLE XV—GENERAL PROVISIONS

SECTION 1501. DISTRICT OF COLUMBIA CORRECTIONAL FACILITY

This section calls for the District of Columbia to construct an 800-bed prison expeditiously.

● Mr. GARN. Mr. President, the section-by-section analysis inserted in the RECORD today was a collaborative effort of the majority and minority staff on the Banking Committee. I believe that it provides an excellent explanation of the recently passed FIRRE bill. Ordinarily, an analysis of this nature would have been included in the committee's report, but due to the time pressure the committee was operating under, an abbreviated report was issued in April. The publication of this document in today's CONGRESSIONAL RECORD fills that gap.●

PRINTING OF A COLLECTION OF INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES

Mr. DODD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Concurrent Resolution 19.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S. Con. Res. 19) entitled "Concurrent resolution to authorize printing of a collection of the inaugural addresses of the Presidents of the United States", do pass with the following amendments:

Strike out all after the resolving clause, and insert:

That there shall be printed as a Senate document, with appropriate illustrations, a collection of the inaugural addresses of the Presidents of the United States, from George Washington, 1789, to George Bush, 1989, compiled by the Congressional Research Service of the Library of Congress. In addition to the usual number, there shall be printed 16,000 copies of the document which shall be made available for a period of 60 days, as follows: 5,000 copies for the use of individual Senators, pro rata, and 11,000 copies for the use of individual Members of the House of Representatives, pro rata. If, at the end of that period, any of the additional number of copies are not so used, such copies shall be transferred to the document room of the Senate or the House of Representatives, as appropriate.

Amend the title so as to read: "Concurrent resolution authorizing the printing of a collection of the inaugural addresses of the Presidents of the United States.".

Mr. DODD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS FOR TUESDAY, JUNE 20, 1989

RECESS UNTIL 11:30 A.M.—MORNING BUSINESS

Mr. DODD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 a.m., Tuesday, June 20, and that following the time for the two leaders there be a period for morning business not to extend beyond 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS FROM 12:30 P.M. TO 2:15 P.M.

Mr. DODD. Mr. President, I further ask unanimous consent that the Senate stand in recess from 12:30 p.m. to 2:15 p.m. in order to accommodate the party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESUMPTION OF THE CONSIDERATION OF S. 5

Mr. DODD. Mr. President, I now ask unanimous consent that at 2:15 p.m. the Senate resume consideration of S. 5, the child-care bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 11:30 A.M. TOMORROW

Mr. DODD. Mr. President, if the distinguished acting Republican leader has no further business and if no Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order until 11:30 a.m. Tuesday, June 20.

There being no objection, the Senate, at 5:04 p.m., recessed until Tuesday, June 20, 1989, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate after the recess of the Senate on June 16, 1989, under authority of the order of the Senate of January 3, 1989:

DEPARTMENT OF STATE

LUIGI R. EINAUDI, OF MARYLAND, TO BE THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE ORGANIZATION OF AMERICAN STATES, WITH THE RANK OF AMBASSADOR.

WARREN A. LAVOREL, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE U.S. COORDINATOR FOR MULTILATERAL TRADE NEGOTIATIONS.

DEPARTMENT OF DEFENSE

STEPHEN JOHN HADLEY, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE RONALD F. LEHMAN II, RESIGNED.

HENRY S. ROWEN, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE RICHARD LEE ARMITAGE, RESIGNED.

DEPARTMENT OF JUSTICE

MARGARET P. CURRIN, OF NORTH CAROLINA, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS VICE SAMUEL T. CURRIN, RESIGNED.

DEPARTMENT OF COMMERCE

THOMAS J. DUESTERBERG, OF INDIANA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE LOUIS F. LAUN, RESIGNED.

DEPARTMENT OF TRANSPORTATION

BRIAN W. CLYMER, OF PENNSYLVANIA, TO BE URBAN MASS TRANSPORTATION ADMINISTRATOR, VICE ALFRED A. DELLIBOVI, RESIGNED.

DEPARTMENT OF ENERGY

J. MICHAEL DAVIS, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF ENERGY (CONSERVATION AND RENEWABLE ENERGY), VICE JOHN R. BERG, RESIGNED.

STEPHEN A. WAKEFIELD, OF TEXAS, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY, VICE FRANCIS S. RUDDY, RESIGNED.

FEDERAL COMMUNICATIONS COMMISSION

SHERRIE PATRICE MARSHALL, OF NORTH CAROLINA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 1992, VICE DENNIS R. PATRICK, RESIGNED.

NOMINATIONS

Executive nominations received by the Senate June 19, 1989:

FEDERAL COMMUNICATIONS COMMISSION

ANDREW CAMP BARRETT, OF ILLINOIS, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR THE TERM EXPIRING JUNE 30, 1990, VICE MARK S. FOWLER, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

CHAPLAIN

To be major

CHARLES R. *. BAILEY, xxx-xx-xxxx
JOHN H. *. BJARNASON, JR., xxx-xx-xxxx
GLEN L. *. BLOOMSTROM, JR., xxx-xx-xxxx
MICHAEL T. *. BRADFIELD, xxx-xx-xxxx
FRANK J. *. BRUNING, xxx-xx-xxxx
CHARLES D. *. CHANDLER, xxx-xx-xxxx
JOEL W. *. COCKLIN, xxx-xx-xxxx
DANIEL J. *. DEVENY, xxx-xx-xxxx
GAETANO *. FRANZESE, xxx-xx-xxxx
PHILIP T. *. GUISTWITE, xxx-xx-xxxx
FREDDIE L. *. HALL, JR., xxx-xx-xxxx
ALAN C. *. HENDRICKSON, xxx-xx-xxxx
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WITHDRAWALS

Executive nominations withdrawn by the President from further Senate consideration, June 16, 1989:

DEPARTMENT OF ENERGY

JOHN R. BERG, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (CONSERVATION AND RENEWABLE ENERGY), VICE DONNA R. FITZPATRICK, WHICH WAS SENT TO THE SENATE ON JANUARY 3, 1989.

FRANCIS S. RUDDY, OF TEXAS, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY, VICE J. MICHAEL FARRELL, RESIGNED, WHICH WAS SENT TO THE SENATE ON JANUARY 3, 1989..